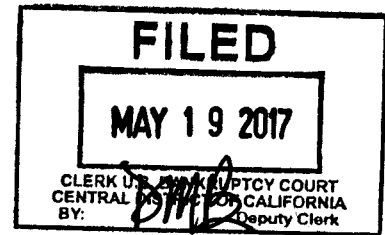


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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SANTA ANA DIVISION**

In re ) CASE NO. SA 06-10373 ES  
) (Chapter 7)

JAY W. JOHNSON and DEBRA F.)  
JOHNSON, )  
)  
Debtors. )

JAY W. JOHNSON, DEBRA F. JOHNSON, ) Adversary No.  
JAY JOHNSON A.I.A. AND ASSOCIATES, )  
INC., RANDAL A. JOHNSON, ROBIN L. )  
JOHNSON, JJ&A ARCHITECTS, INC., and )  
Q FINANCIAL GROUP, LLC, )

Plaintiffs, )

vs. )

ROSENDO GONZALEZ, individually and as )  
Trustee of the Bankruptcy Estate of Jay W. )  
Johnson and Debra F. Johnson, JAMES A. )  
HINDS, Jr., HINDS & SHANKMAN, LLP, )  
and RICHARD A. LAPIDES, )

Defendants. )

**COMPLAINT FOR**  
**WRONGFUL USE OF**  
**CIVIL PROCEEDINGS**  
**(MALICIOUS PROSECUTION)**

**DEMAND FOR JURY TRIAL**

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1 The plaintiffs, Jay W. Johnson, Debra F. Johnson, Jay Johnson A.I.A. and  
2 Associates, Inc., Randal A. Johnson, Robin L. Johnson, JJ&A Architects, Inc., and Q  
3 Financial Group, LLC, complain and allege against Rosendo Gonzalez, individually and  
4 as Trustee of the Bankruptcy Estate of Jay W. Johnson and Debra F. Johnson, James A.  
5 Hinds, Jr., Hinds & Shankman, LLP, and Richard A. Lapidès, the defendants, as follows:

6  
7 **CLAIM FOR RELIEF**  
8 **WRONGFUL USE OF CIVIL PROCEEDINGS**  
9 **(MALICIOUS PROSECUTION)**  
10

11 **I. JURISDICTION AND PARTIES**

12 **A. Jurisdiction**

13 1. This court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 151, 157,  
14 1334, and 1367(a), 11 U.S.C. § 105, Federal Rules of Bankruptcy Procedure, Rule 7001,  
15 as well as the Local Bankruptcy Rules of the United States Bankruptcy Court and the  
16 Local Rules for the United States District Court for the Central District of California.

17 **B. Plaintiffs, Defendants, and Richard Lapidès's Character Traits and**  
18 **Pattern of Behavior or *Modus Operandi* and Litigious Nature**

19 **1. Plaintiffs**

20 2. Jay W. Johnson and Debra (Debbie) F. Johnson are husband and wife. For  
21 ease of reference and to avoid stilted and cumbersome dialogue, Jay and Debbie Johnson  
22 are sometimes referred to simply as "Jay" and "Debbie."

23 3. Jay Johnson A.I.A. and Associates, Inc. ("JJ-AIA"), is a California  
24 corporation owned by Jay Johnson.

25 4. Randal (Randy) A. Johnson and Robin L. Johnson are husband and wife.  
26 Randy Johnson is Jay Johnson's brother. For ease of reference and to avoid stilted and  
27 cumbersome dialogue, Randy and Robin Johnson are sometimes referred to simply as  
28 "Randy" and "Robin."

1           5.     JJ&A Architects, Inc. (“JJ&A”), is a California corporation owned by Randy  
2 Johnson. Q Financial Group, LLC (“Q Financial”), is a California limited liability  
3 company owned by Randy and Robin Johnson.

4                   **2.     Defendants**

5           6.     Rosendo Gonzalez (“Gonzalez”) is a lawyer licensed to practice law in the  
6 state of California and a Chapter 7 Trustee.

7           7.     James A. Hinds, Jr. (“Hinds”), is a lawyer licensed to practice law in the state  
8 of California, formerly the managing member of the Law Offices of James A. Hinds, Jr.,  
9 and subsequently the managing partner of Hinds & Shankman, LLP (“H&S”), a California  
10 limited liability partnership.

11           8.     Richard A. Lapidés (“Lapidés”) and Janis T. Lapidés, whose maiden name is  
12 Janis Thornley (and not a named defendant), are husband and wife and were married  
13 August 6, 1993. At all times alleged herein Lapidés was employed as an appraiser for the  
14 Internal Revenue Service (“IRS”).

15                   **3.     Lapidés’s Character Traits, *Modus Operandi*, and litigious nature**

16                           **a.     Lapidés’s character traits and *modus operandi***

17           9.     Lapidés has a pattern of behavior or *modus operandi* he follows to take  
18 advantage of others for his own purposes. The Johnsons and Lapidés are members of The  
19 Church of Jesus Christ of Latter-day Saints (“LDS Church”), and Lapidés used his  
20 friendship and church association with Jay and Debbie Johnson to gain their trust and take  
21 advantage of their forbearing and charitable natures to cheat them and enrich himself at  
22 their expense. Lapidés also preyed upon other members of the LDS Church who assumed  
23 he was honest in his dealings with them; but once they became involved with Lapidés, he  
24 turned on them and falsely accused them of not fulfilling their obligations as an excuse for  
25 his own dereliction in not paying what he owed them or not keeping his own commitments.  
26 Lapidés followed a similar pattern with tradesmen and professionals who provided him  
27 with goods and services. Lapidés engaged in combative behavior to intimidate others into  
28 either taking less than they were owed or paying him more than he was entitled to be paid.

1 Lapides engaged in bullying, cajoling, arguing, lying, and making threats to report  
2 supposed crimes to criminal authorities and the IRS until his victims paid him what he  
3 wanted or gave up what they were entitled to have. The following examples demonstrate  
4 Lapides's pattern of behavior or *modus operandi* and illustrate the traits of his character  
5 which evidence his eventual hatred and animosity toward the Johnsons:

6 a. For many years, Lapides rented rooms in his house to others. One of his  
7 renters was Brian Gunn. Lapides and Gunn got into a dispute, and Lapides reported the  
8 matter to the Los Angeles County Sheriff's Office, accusing Gunn of slashing the tires on  
9 his car. On May 30, 1990, Gunn filed a civil action against Lapides. Another renter was  
10 Steve Biggs who rented a room from Lapides from 1990 to 1992, and when he left, Lapides  
11 refused to return to him his \$400 deposit, insisting Biggs was not entitled to the deposit.

12 b. Lapides hired George Brazil Plumbing Heating Air Conditioning to do work  
13 at his home. When the work was completed, Lapides complained and argued the job had  
14 not been done properly and refused to pay for the work. When the dispute became heated,  
15 the plumber called the Los Angeles County Sheriff, and Lapides was led away in handcuffs  
16 by two deputy sheriffs.

17 c. Lapides hired Jesus Hernandez, a gardener, to trim the trees on his property,  
18 and when Hernandez asked for payment, Lapides complained and argued the job had not  
19 been done properly and refused to pay him.

20 d. Lapides hired an electrician to do work at his home, and Lapides again  
21 complained and argued the job had not been done properly and refused to pay the full  
22 amount charged.

23 e. Lapides hired Istvan Batori, a cabinet maker, to do work for him, and when  
24 Batori asked for payment, Lapides complained and argued the job had not been done  
25 properly and refused to pay him. On September 26, 2002, Lapides filed a small claims  
26 action against Istvan. On October 29, 2002, Istvan filed a counterclaim against Lapides  
27 for unpaid wages. On March 11, 2003, judgment was entered in favor of Istvan and against  
28 Lapides in the amount of \$2,325 for unpaid wages, plus costs.

1 f. Lapidès hired Robert Frame, a member of the LDS Church, to remove tree  
2 stumps and do grading on his property, and then argued with Frame over the work and  
3 never paid him for his services.

4 g. Dan Dodge was a contractor and member of the LDS Church. In about  
5 December 1996, Dodge contracted with Lapidès to add a family room to his house.  
6 Lapidès provided Dodge drawings or plans from which to build. The project went well  
7 except for a few items Dodge agreed to do that were not in the plans and which he did  
8 without changing his price. As the project came to an end Lapidès began to find issues  
9 with the last few items. For example, the roof was called out to tie into the existing roof  
10 without removing the many layers of existing roof material. Also, there was no gutter  
11 system called out on the plans. Lapidès also wanted built-in shelves in the new closet that  
12 was not a part of the contract. Dodge had his roofer build up the new roof section to match  
13 the old from the connection point out two to three feet and then taper back to the single  
14 layer of roofing on the new addition. Lapidès would not accept this work even after Dodge  
15 had the roof manufacturer meet on site and verify the installation. Dodge finally agreed to  
16 put on a gutter system to pacify Lapidès's "unhappiness" about the roof.

17 After putting the gutter system in place Lapidès requested Dodge provide shelving  
18 in the closet that was not on the plans, and that Dodge do it at no cost to Lapidès. Lapidès  
19 stated he was not going to pay Dodge the balance of the contract, and stated that Dodge  
20 was contracting without a license. Lapidès owed Dodge approximately \$10,000, not  
21 including the shelving or the other extra items Dodge did that were not part of the contract.  
22 Lapidès also demanded that Dodge pay him back all the money Lapidès had paid to that  
23 point, and threatened that if Dodge did not pay him, he would sue Dodge.

24 Dodge's license had lapsed because his brother, who was his business partner, had  
25 not paid the renewal fee. Dodge called the California Contractor's State Licensing Board  
26 and paid the fee. The Board immediately reactivated Dodge's license. Lapidès stated to  
27 Dodge he knew the license was inactive when he contracted with Dodge but did so because  
28 he knew he could get the job for less money or for free by using that against Dodge.

1 Lapidès went further by inviting Dodge into his office where Lapidès showed him a three-  
2 drawer filing cabinet Lapidès said was filled with lawsuits. Lapidès opened the drawers,  
3 one by one, and drew his finger across the tops of the folders and said: "All these people  
4 have lost and have had to pay me." Lapidès showed Dodge another filing cabinet filled  
5 with files and stated that all those files were pending cases he was going to win also.

6 Michael Bayard, a lawyer and member of the LDS Church who specialized in  
7 construction law and a friend to Dodge, told Lapidès that while Dodge could not force  
8 Lapidès to pay him the balance owing because his license had lapsed, Lapidès could not  
9 force Dodge to give back the money Dodge had been paid. Lapidès never paid Dodge what  
10 he was owed.

11 At the trial which is the subject of this action, Lapidès was shown a copy of a  
12 supposed contract on letterhead dated December 16, 1996 reading "Dodge Construction  
13 Company" which Lapidès testified was signed by both he and Dodge. Lapidès was also  
14 shown a copy of a supposed second agreement Lapidès testified was signed by both he  
15 and Dodge dated April 21, 1997. Lapidès denied he prepared the first contract with the  
16 letterhead "Dodge Construction Company," and testified it was given to him by Dodge  
17 and Lapidès signed it. Lapidès testified he prepared the second agreement dated April 21,  
18 1997, that he signed it and then Dodge signed it in his presence. Also produced at trial was  
19 a declaration signed by Dodge, and it was obvious the signatures on the contracts Lapidès  
20 testified Dodge signed, did not match Dodge's genuine signature on the declaration.  
21 Dodge testified he never had stationary like the supposed contract on the letterhead reading  
22 "Dodge Construction Company," he had never seen the two documents before counsel for  
23 the Johnsons showed them to him, and he did not sign them.

24 h. Dean Snyder Construction performed work for Lapidès at his house and  
25 when the work was done a dispute arose regarding payment for the work. On March 14,  
26 2001, Dean Snyder Construction filed a small claims action against Lapidès.

27 i. David Luna was an attorney who represented Lapidès in Lapidès's failed  
28 effort to avoid sanctions for violating the automatic stay immediately following the

1 bankruptcy filing by Jay and Debbie Johnson. Lapidès then sued Luna in Los Angeles  
2 Superior Court.

3 j. Lapidès hired Mark Huchins, an architect, to draw up plans for a small house  
4 on his property, and when Lapidès discovered he could not use the plans because he had  
5 not given Huchins correct information, he threatened Huchins with a lawsuit if Huchins  
6 did not refund the fee Lapidès had paid. To avoid the stress of litigation, Huchins refunded  
7 the payment.

8 k. Evelyn Callister, a divorced woman with eight children and member of the  
9 LDS Church, rented rooms in her home to the Church missionaries and others to earn  
10 money. Lapidès persuaded Callister to rent a room temporarily to his mother. A few months  
11 later when Callister indicated she needed the room for her daughter when she returned  
12 from school, Lapidès threatened to sue Callister for violating the Americans with  
13 Disabilities Act for allegedly discriminating against his mother because she was  
14 supposedly handicapped. Lapidès threatened to take Callister's deposition and subpoena  
15 all her bank statements and deposit records, tenant records, and federal income tax returns,  
16 and threatened to report her to the IRS. Lapidès accused Callister of putting his mother in  
17 a life-threatening position, and threatened to sue her if anything untoward happened to his  
18 mother. Lapidès further threatened to sue Callister and take away her house to pay for a  
19 judgment, telling her that his attorney had assured him he had a seventy-five percent  
20 chance of winning a planned \$300,000 lawsuit; and just for good measure Lapidès told  
21 Callister to "show a little Christian compassion." Lapidès finally said he would settle for  
22 \$2500, which included \$500 for moving expenses to move his mother. The demand was  
23 paid by several members of the LDS Church, and Lapidès then asked the elders in the  
24 Church to move his mother for free and pocketed the extra money.

25 l. During the installation of sewers in the City of La Cañada Flintridge, Lapidès  
26 refused permission to lay the sewers under the road leading to his house, forcing the City  
27 to file an action for eminent domain/condemnation on October 24, 2006.

28

1 m. Gonzalez brought an ill-conceived motion to enforce a supposed settlement  
2 between the parties in the bankruptcy proceedings. The court erroneously granted the  
3 motion and Jay and Debbie had to pay the \$138,000 portion of the settlement then due  
4 pursuant to the supposed agreement. After the bankruptcy court reconsidered and reversed  
5 the decision, Lapidès refused to refund the money he had received and the Johnsons were  
6 forced to obtain an order from the court forcing Lapidès to repay the money.

7 n. On September 2, 2008, Lapidès filed suit against his sister, Mona Lapidès,  
8 seeking a restraining order regarding domestic violence which was denied. On March 23,  
9 2009, Lapidès again filed suit against his sister, Mona Lapidès, seeking a restraining order  
10 regarding domestic violence which was granted.

11 o. On June 24, 2010, Design Forward LLC filed a small claims action against  
12 Lapidès for unpaid fees owed for architectural work. On August 3, 2010, Lapidès filed a  
13 counterclaim for damages. Lapidès's claim was denied and judgment was entered in favor  
14 of Design Forward LLC in the amount of \$3,600, plus costs.

15 **b. Lapidès's litigious nature**

16 10. Lapidès is an extremely litigious person, threatening to sue everyone with  
17 whom he has a dispute, whether real or concocted, to force them to capitulate to his  
18 demands. Lapidès initiated lawsuits against others or was sued by others in over twenty  
19 different actions. The disputes between Lapidès and the Johnsons spanned almost thirty  
20 years, and for half that time Lapidès embroiled the Johnsons in unfounded and malicious  
21 litigation. In addition to the cases identified later in this complaint, Lapidès was involved  
22 in the following litigation demonstrating his pattern of behavior and litigious nature and  
23 evidence of his instigating unwarranted litigation against the Johnsons to coerce or  
24 pressure them to accede to his wishes:

25 a. July 14, 1982, *Jesse Duran and Jose Duran v. Richard Lapidès*, Los Angeles  
26 Superior Court, Case No. NWC 87541.

27 b. May 30, 1990, *Brian Gunn v. Richard Lapidès*, Los Angeles Superior Court,  
28 Case No. ES 50 (Burbank-Glendale).

- 1 c. July 10, 1990, *Richard Lapidès v. Elias Coutin, et al.*, Los Angeles Superior  
2 Court, Case No. EC 831 (Burbank-Glendale).
- 3 d. September 5, 1990, *The Elias Coutin & Anne Coutin Family Trust v. Richard*  
4 *Lapidès*, Los Angeles Superior Court, Case No. BC 009767.
- 5 e. August 24, 1993, *Edward Fong v. Richard Lapidès*, Los Angeles Superior  
6 Court, Case No. 93K31521.
- 7 f. November 9, 1993, *Richard Lapidès v. Jay Johnson and Debbie Johnson*,  
8 Los Angeles Superior Court, Case No. EC013523.
- 9 g. December 5, 1994, *Hunt, Ortmann, Blasco, Pallfy, Rossell v. Richard*  
10 *Lapidès*, Los Angeles Superior Court, Case No. GC013673.
- 11 h. June 21, 1995, *Hunt, Ortmann, Blasco, Pallfy, Rossell v. Richard Lapidès*,  
12 Los Angeles Superior Court, Case No. 95C02060.
- 13 i. March 23, 1999, *Richard Lapidès v. Citicorp Mortgage, Inc.*, Small Claims,  
14 Glendale, Case No. 99S00539.
- 15 j. March 14, 2001, *Dean Snyder Construction v. Richard Lapidès*, Small  
16 Claims, Glendale, Case No. 01S00376,
- 17 k. May 10, 2002, *Richard Lapidès v. David Luna*, Los Angeles Superior Court,  
18 Case No. 02K09081.
- 19 l. September 26, 2002, *Richard Lapidès v. Istvan Batori*, Small Claims,  
20 Glendale, Case No. 02SG1803.
- 21 m. January 29, 2004, *Shayna Lapidès v. Richard Lapidès, et al.*, Orange County  
22 Superior Court, Case No. 04CC00334.
- 23 n. October 1, 2004, *Jay Johnson, et al., v. Richard Lapidès, et al.*, USBC, Adv.  
24 No. AD04-02572 ES.
- 25 o. October 24, 2006, *City of La Cañada Flintridge v. Richard Lapidès, et al.*,  
26 Los Angeles Superior Court, Case No. BC360766.
- 27 o. March 2, 2007, *Randal A. Johnson, et al., v. Richard Lapidès, et al.*, Los  
28 Angeles Superior Court, Case No. BC367211.

1 q. February 1, 2008, *Jay Johnson v. Rosendo Gonzalez, Richard Lapidés*, Los  
2 Angeles Superior Court, Case No. BC384860.

3 r. September 2, 2008, *Richard Lapidés v. Mona Lapidés*, Los Angeles Superior  
4 Court, Case No. EQ005241.

5 s. March 23, 2009, *Richard Lapidés v. Mona Lapidés*, Los Angeles Superior  
6 Court, Case No. EQ006141.

7 t. June 24, 2010, *Design Forward LLC v. Richard Lapidés*, Small Claims,  
8 Glendale, Case. No. 10SG1394.

9 u. December 6, 2016, *Jay Johnson, et al. v. Richard Lapidés*, Los Angeles  
10 Superior Court, Case No. BC642798.

11 **II. THE BANKRUPTCY PROCEEDINGS, LAPIDÉS'S SUBSTANTIAL**  
12 **INVOLVEMENT, AND MALICIOUS PROSECUTION**

13 **A. The Bankruptcy Proceedings**

14 **1. The Bankruptcy Case**

15 11. On April 5, 2001 ("Petition Date"), Jay and Debbie Johnson (sometimes  
16 referred to as "Debtors") filed a voluntary petition under Chapter 7 of Title 11 of the United  
17 States Code ("Bankruptcy Petition"). Case No. LA 01-20244 ES, later renumbered SA 06-  
18 10373 ES ("Bankruptcy Case"), creating a bankruptcy estate ("Bankruptcy Estate"). The  
19 first meeting of creditors was held May 8, 2001, at which Gonzalez was elected the  
20 Chapter 7 Trustee. The Debtors filed their Schedules and Statement of Financial Affairs  
21 ("Bankruptcy Schedules") on April 20, 2001, as amended on July 26, 2001, and again on  
22 October 29, 2002, and received their Chapter 7 discharge ("Bankruptcy Discharge") on  
23 November 6, 2001.

24 **2. Gonzalez I**

25 12. On June 2, 2003, at Lapidés's instigation and urging, Gonzalez filed a  
26 complaint against Randy Johnson and JJ&A, Adversary No. LA 03-01851 ES, renumbered  
27 SA 06-01313 ES ("Gonzalez I"). The complaint was filed by Lapidés's then attorney,  
28 Teresa A. Blasberg, designated in the caption as "Proposed Special Counsel for Rosendo

1 Gonzalez, Chapter 7 Trustee.” On October 2, 2003, the Law Offices of James A. Hinds,  
2 Jr., whom Lapides agreed to pay, was substituted in as counsel for Gonzalez.

3 13. On November 26, 2003, JJ&A was dismissed with prejudice. The complaint  
4 alleged claims to avoid fraudulent transfers pursuant to 11 U.S.C § 544 and Cal. Civ. Code  
5 §§ 3439.04(a)(1) and 3439.07(a)(1) (first claim: transfers made with intent to hinder,  
6 delay, or defraud creditors), 11 U.S.C § 544 and Cal. Civ. Code §§ 3439.05 and  
7 3439.07(a)(1) (second claim: transfers for less than reasonably equivalent value while the  
8 debtors were insolvent or which rendered the debtors insolvent), 11 U.S.C § 544 and Cal.  
9 Civ. Code §§ 3439.04(a)(2)(A) and 3439.07(a)(1) (third claim: transfers for less than  
10 reasonably equivalent value that rendered the debtors undercapitalized), and 11 U.S.C  
11 § 544 and Cal. Civ. Code §§ 3439.04(a)(2)(B) and 3439.07(a)(1) (fourth claim: transfers  
12 for less than reasonably equivalent value and the debtors intended to incur debts beyond  
13 their ability to pay), to recover property or damages on account of avoided transfers  
14 pursuant to 11 U.S.C § 550(a)(1) (fifth claim), to recover property or damages on account  
15 of avoided transfers pursuant to 11 U.S.C § 550(a)(2) (sixth claim), for a constructive trust  
16 (seventh claim), and for injunctive relief (eighth claim).

17 **3. Gonzalez II**

18 14. On September 22, 2004, again at Lapides’s instigation and urging, Gonzalez,  
19 represented by Hinds, whom Lapides agreed to pay, filed a complaint against the Debtors,  
20 JJ-AIA, Randy and Robin Johnson, JJ&A, and Q Financial, Adversary No. LA 04-02540  
21 ES, renumbered SA 06-1311 ES (“Gonzalez II”). The complaint alleged claims for  
22 revocation of discharge pursuant to 11 U.S.C § 727(d)(2) and (e)(2)(B) (first claim),  
23 turnover and accounting pursuant to 11 U.S.C § 542(a) and (e) (second claim), conversion  
24 (third claim), and constructive trust (fourth claim).

25 **4. Consolidation of Gonzalez I and II and Trial**

26 15. By Order entered April 6, 2005 in Gonzalez II and Order entered April 11,  
27 2005 in Gonzalez I, the court consolidated Gonzalez I and II. Trial was held over a three-  
28 week period: February 24-28, April 22-25, and October 20-24, 2014. On February 24,

1 2016, the court ruled in favor of the Johnsons and their companies on all claims, and  
2 judgment was entered in favor of the Johnsons and their companies on May 20, 2016,  
3 from which there was no appeal, and the time to appeal has expired. At the end of trial  
4 the court found Gonzalez failed to prove any element of any of the claims.

5 **B. Lapidès's Substantial Involvement in the Bankruptcy Proceedings**

6 16. Lapidès's interest in the outcome of Gonzalez I and II was significant and  
7 his participation in the cases extensive. Lapidès was the only complaining creditor in the  
8 Bankruptcy Case and stood to gain financially if Gonzalez prevailed. Lapidès retained  
9 Hinds to represent Gonzalez and funded the litigation in its entirety, and testified the first  
10 day of trial that he had paid Hinds between \$200,000 and \$300,000 and still owed him as  
11 much as \$800,000. Hinds contends that after trial Lapidès owes him \$1,200,000.

12 17. Lapidès gathered and analyzed all the evidence in the cases, testifying he  
13 reviewed "hundreds of thousands" of documents, and spent over four thousand hours  
14 preparing his two-hundred-page report with thousands of exhibits to support the claims  
15 asserted in the adversary proceedings and his one hundred-eighty-page response to the  
16 thirty-one-page report prepared by Chad Turner, the expert for the Johnsons. Lapidès  
17 participated in all phases of the litigation, appearing at court hearings and attending all  
18 depositions, and prepared and submitted dozens of declarations in motions brought or  
19 opposed by Gonzalez or in support of his own motions throughout the ten years of  
20 litigation. Lapidès participated in the mediation of the cases and the unsuccessful attempt  
21 to enforce a settlement. Lapidès, virtually the only witness to testify in behalf of Gonzalez,  
22 testified as both a percipient and an expert witness at trial and was on the stand for nine  
23 days. Except for Lapidès there would have been no case at all—Lapidès was the real party  
24 in interest in the litigation—Gonzalez was the plaintiff in name only.

25 **C. Malicious Prosecution**

26 18. Lapidès, Gonzalez, Hinds, and H&S (the "Defendants"), were actively  
27 involved in initiating or bringing and continuing Gonzalez I and II. Gonzalez I and II  
28 ended in favor of Jay Johnson. Debbie Johnson, JJ-AIA, Randy Johnson, Robin Johnson,

1 JJ&A, and Q Financial (the “Plaintiffs”). The claims asserted in Gonzalez I and II were  
2 based entirely on the so-called expert reports prepared by Lapides, and depended almost  
3 exclusively upon Lapides’s testimony. An objective examination of Lapides’s reports at  
4 any time would have shown without question that the Defendants lacked probable cause  
5 to initiate or continue Gonzalez I and II in that no reasonable person in the Defendants’s  
6 circumstances would have believed there were reasonable grounds to bring the claims  
7 alleged against the Plaintiffs. The Plaintiffs obtained a rebuttal report from Chad Turner,  
8 a certified public accountant, which exposed Lapides’s report as “useless for any purpose”  
9 because of its “numerous errors, omissions of material facts and information,  
10 incompetence, untrue statements, bias, gross inaccuracies, and the like.” Counsel for the  
11 Plaintiffs urged Gonzalez and Hinds in the strongest terms that if they had any questions  
12 about Turner’s expertise or the conclusions in Turner’s report, they should retain an  
13 independent expert of their own, pointing out Lapides’s obvious bias and conflict of  
14 interest, and warning them that if they continued to pursue Gonzalez I and II they would  
15 be doing so with malice or deliberately turning a blind eye to the truth, and that if the  
16 Plaintiffs prevailed in the litigation they would sue the Defendants for malicious  
17 prosecution. The Plaintiffs further stressed that virtually all the conduct complained about  
18 was engaged in by Jay and Randy Johnson, and that Debbie and Robin Johnson were free  
19 from any taint of fraud or wrongful conduct and should be immediately dismissed. The  
20 pleas for Debbie and Robin fell on deaf ears and they felt the full brunt of the onslaught.

21 19. The Defendants acted with malice in initiating and continuing Gonzalez I  
22 and II and acted primarily for purposes other than succeeding on the merits, such as forcing  
23 a settlement from the Plaintiffs. The Plaintiffs were harmed by the initiation and  
24 continuation of Gonzalez I and II, suffering out of pocket loss in the form of attorney fees  
25 and costs in defending against fabricated claims, as well as suffering emotional distress  
26 and injury to reputation because of groundless allegations made in pleadings which are  
27 public records and made in spite and ill will and magnified by slanderous allegations, and  
28 the Defendants’s conduct was a substantial factor in causing the Plaintiffs’s harm.

1 **III. THE EVENTS LEADING TO BANKRUPTCY**

2 **A. Early Events and the First Transaction between the Johnsons and**  
3 **Lapides**

4 20. The early events leading to the filing of bankruptcy evidence the great  
5 hostility, hatred, and ill will Lapides had toward Jay and Debbie Johnson and demonstrate  
6 Lapides's malicious attitude in pursuing the Johnsons in litigation for years.

7 21. Jay Johnson grew up in Southern California. He obtained his Bachelor of  
8 Architecture in 1977 from California Polytechnic State University, San Luis Obispo. Jay  
9 paid his way through college, but his financial resources were exhausted by the time he  
10 graduated and started his architectural career with Cornwall & Associates in Pasadena,  
11 California.

12 22. Jay Johnson became acquainted with Lapides in 1979.

13 23. Jay and Debbie Johnson married in 1980.

14 24. In 1981, Jay and Debbie Johnson together with Lapides purchased a piece of  
15 property on Castle Road in La Cañada, California (the "Castle Road Property"), and split  
16 the property into two lots. To split the property, it was necessary for them to obtain a  
17 separate water meter for the back lot. Jay and Debbie Johnson lived in a home on the front  
18 lot, and Lapides lived in a home on the back lot, where he lives today.

19 25. In 1984, Jay Johnson started his own architectural business and formed JJ-  
20 AIA, incurring the expense attendant to such an enterprise. Jay Johnson is and always has  
21 been the sole owner of JJ-AIA. Jay was successful as an architect, and for the most part  
22 earned a good living, but he and Debbie were never affluent, and circumstances were such  
23 that they were never able to accumulate much wealth.

24 **B. The La Forest Drive Properties**

25 26. In early 1987, Jay and Debbie Johnson purchased vacant land behind 5495  
26 La Forest Drive from Joseph Oliver for \$250,000 (the "Oliver Property"). To purchase the  
27 property, they paid \$100,000 in cash, \$30,000 from their savings and \$70,000 borrowed  
28 from a private party secured by a third deed of trust on their home on Castle Road. For the

1 balance of the purchase price they signed a note in favor of Oliver in the amount of  
2 \$150,000, secured by a second deed of trust on their home on Castle Road. Their plans  
3 were to build a home for themselves on the property.

4 27. Before Jay and Debbie purchased the Oliver Property, it was part of a larger  
5 piece of property which Oliver split into two lots. Oliver owned a home on the front or  
6 lower lot (5495 La Forest Drive) and Jay and Debbie purchased the back or upper lot. It  
7 was inconceivable to Jay, an architect specializing in designing homes in the La Cañada  
8 area, that the city would permit the lot split and approve the lot for building a home if for  
9 some reason a water meter could not be obtained for the lot, because without a water meter,  
10 the owner would be prohibited from building on the lot. In his experience as an architect,  
11 Jay knew the lot could not be split if a water meter could not be obtained for the lot, and  
12 he and Lapides had just a few years earlier, gone through the exercise of splitting the Castle  
13 Road Property to obtain a water meter for the back lot where Lapides lived.

14 28. When Jay and Debbie Johnson were considering buying the Oliver Property,  
15 they asked the broker, Mary Ellen Moore, a well-known and experienced real estate broker  
16 in La Cañada, if there was water on the property. Moore pointed out the many fruit trees  
17 on the property and turned on a hose bib through which water flowed. Jay also asked  
18 Moore where the water meter was located, and she pointed out a water meter next to the  
19 curb on the street (where water meters are located) near the driveway to the property. Jay  
20 and Debbie and Moore, assumed that was the water meter for the lot.

21 29. A few months after purchasing the Oliver Property, Jay Johnson obtained  
22 from Virginia Tryon an option (the "Johnson Option") to purchase from her a second  
23 parcel of real property on La Forest Drive (the "Tryon Property") adjacent to the Oliver  
24 Property. In speaking with the La Cañada City Planner, Jay believed the Tryon Property  
25 could be subdivided into four or five lots, and it was his plan to subdivide the property as  
26 a development project.

1                   **1.     The Lapidès Property**

2           30.     After Jay and Debbie Johnson purchased the Oliver Property and had secured  
3 the Johnson Option, Lapidès approached the Johnsons and proposed the Johnsons split the  
4 Oliver Property into two lots, like had been done on the Castle Road Property, and that the  
5 Johnsons sell one of the lots to Lapidès, suggesting the Johnsons build their house on the  
6 other lot. Jay and Debbie walked Lapidès around the Oliver Property and pointed out  
7 where he could build a house on the property. As they walked around the property, Lapidès  
8 inquired as to whether there was water on the property, and, like Moore did for them, the  
9 Johnsons turned on a hose bid through which water flowed and pointed out the water meter  
10 at the curb by the driveway.

11           31.     On August 28, 1987, Jay and Debbie Johnson sold the Oliver Property to  
12 Lapidès (the “Lapidès Property”). The terms of the sale of the Lapidès Property were as  
13 follows:

14                   a.     Lapidès was to make a \$50,000 down payment prior to close of escrow  
15 (the “Cash Down Payment”). Lapidès put \$500 down in escrow, and when he did not come  
16 up with the Cash Down Payment by the close of escrow on November 2, 1987, the  
17 Johnsons agreed to accept an unsecured note for \$50,750 (interest included) payable  
18 December 1, 1987. As was his wont, Lapidès failed to pay the note on time, causing the  
19 Johnsons a loss of interest.

20                   b.     Lapidès was to sign a note for \$15,000, secured by a deed of trust on  
21 his home on Castle Road, with payments to begin one year from close of escrow with all  
22 unpaid interest and principle due two years from close of escrow or one year from the date  
23 it was determined the lot could not be split, whichever came first (the “\$15,000 Lapidès  
24 Note”). Lapidès did not sign the \$15,000 Lapidès Note until March 1, 1988, the Johnsons  
25 losing four months’ interest in the amount of \$609. Lapidès never paid the full amount of  
26 the note, nor did he pay it on time (see below).

27                   c.     Lapidès was to sign a second note for \$150,000, also secured by a  
28 deed of trust on his home on Castle Road, with payments of interest or more commencing

1 the first month following close of escrow with all unpaid interest and principal due August  
2 1, 1988. Instead of giving the Johnsons a note for \$150,000, in March 1988, Lapidés paid  
3 the Johnsons \$30,000 and gave them a note in the amount of \$120,000 (the “\$120,000  
4 Lapidés Note”), bearing interest from March 1, 1988, the Johnsons thus losing four  
5 months’ interest in the amount of \$4,000. Payments on the note were to commence April  
6 1, 1988, with all unpaid interest and principal due August 1, 1988. Lapidés never paid the  
7 full amount of the note, nor did he pay it on time (see below).

8 d. Lapidés was to pay Jay and Debbie Johnson fifty percent of the profit  
9 derived from the sale of certain gold and silver coins he owned not exceeding \$10,000.  
10 The Johnsons never heard whether Lapidés ever sold the coins and they never received  
11 anything from the sale of the coins if the coins were sold.

12 e. Jay and Debbie Johnson were to convey to Lapidés an undivided  
13 ninety percent interest in the Lapidés Property, and were to transfer the remaining ten  
14 percent interest once Lapidés made a \$35,000 principal reduction. By Grant Deed recorded  
15 November 2, 1987, the Johnsons transferred an undivided ninety percent interest in the  
16 Lapidés Property to Lapidés. When Lapidés paid the Johnsons \$30,000 in March (as  
17 opposed to the contemplated \$35,000) and signed the \$120,000 Lapidés Note, the  
18 Johnsons conveyed the remaining ten percent interest in the Lapidés Property to Lapidés  
19 by Grant Deed recorded June 2, 1988.

20 f. If the lot could be split, the Johnsons were to convey to Lapidés the  
21 upper lot and Lapidés was to convey to the Johnsons the lower lot, for \$1 each.

22 g. If the lot could not be split, Lapidés was to pay the Johnsons an  
23 additional \$60,000 for the property, all interest and principal due one year from the close  
24 of escrow or whenever it was determined the lot could not be split, whichever came later.  
25 In addition, costs of improvements were to be shared fifty-fifty, but if the lot could not be  
26 split, Lapidés was to reimburse the Johnsons for their share of the improvements. The lot  
27 was not split, but Lapidés never reimbursed the Johnsons for their share of the  
28 improvements.

1 h. Jay Johnson was to provide and did provide Lapides with a  
2 preliminary site grading plan, together with elevations, perspectives, and floor plans of a  
3 house for Lapides on the property.

4 i. Lastly, Lapides added to the end of the agreement: "Seller guarantees  
5 that a single-family residence can be constructed on the subject site, and that ... water ...  
6 [is] available to the site" (the "Water Guarantee").

7 **2. The Johnson Property and the Lapides Option**

8 **a. The Johnson Property**

9 32. After ten years of hard work, Jay Johnson had gained a reputation in the La  
10 Cañada and surrounding area community as a talented and superb architect and had a  
11 bright future ahead of him. As a reflection of his status in the community, Jay Johnson  
12 designed and built a large house on a lot the Johnsons purchased on Greenridge Drive in  
13 La Cañada, and in May 1988, the Johnsons sold their house on Castle Road and moved  
14 into the new house on Greenridge Drive.

15 33. The \$120,000 Lapides Note was due August 1, 1988, but Lapides  
16 complained he was unable to pay the note and the Johnsons let the due date pass as an  
17 accommodation to him. Lapides was supposed to pay at a minimum interest monthly, and  
18 while Lapides did pay some interest, he did not pay all interest due, nor did he always pay  
19 on time.

20 34. On October 20, 1989, the Johnsons exercised the Johnson Option and  
21 purchased the Tryon Property for \$700,000 (the "Johnson Property"). The Johnsons paid  
22 \$50,000 in cash and signed a note for \$650,000 for the balance (the "Tryon Note"). It was  
23 contemplated that the property could be subdivided into five lots. One of the lots was to  
24 be re-conveyed to Tryon who was going to build a home for herself on that lot, and the  
25 Johnsons intended to build a home for themselves on one of the other lots.

26 35. In April 1990, the Johnsons needed the money owing on the \$120,000  
27 Lapides Note, now almost two years past due, to proceed with the development of the  
28 Johnson Property and to meet their other expenses. Lapides was well aware of the

1 Johnsons's predicament, and told them he would not pay the note unless they discounted  
2 the amount owing. The Johnsons abhorred contention and had been taught to avoid  
3 litigation whenever possible and were loath to start a lawsuit to collect on the note. In  
4 addition, they had little money to hire a lawyer and needed the money to continue their  
5 project and meet their other expenses, and so on April 12, 1990, they capitulated to  
6 Lapidès's demands and agreed to a discounted payment in the amount of \$102,000, thus  
7 losing \$18,000 principal and whatever interest Lapidès had not paid.

8 **b. The Lapidès option**

9 36. On April 12, 1990, even though the Johnsons accepted a discount on the  
10 \$120,000 Lapidès Note, Lapidès also refused to pay the note unless the Johnsons granted  
11 him an option (the "Lapidès Option") to purchase three parcels of the Johnson Property  
12 that surrounded the upper portion of the Lapidès Property. The option agreement was  
13 amended August 1, 1993, and, again, on May 27, 1994, and on April 9, 1996, Lapidès  
14 allegedly exercised his option to purchase the property.

15 **3. The property line dispute with the Coutins**

16 37. The Lapidès Property was also adjacent to property owned by The Elias  
17 Coutin & Anne Coutin Family Trust (the "Coutin Trust") (the "Coutin Trust Property"). A  
18 paved road off La Forest Drive straddled the two properties, over which Lapidès, the  
19 Coutins, and Oliver had an easement to access their various properties. Lapidès contended  
20 he had an exclusive prescriptive easement that extended some distance across the paved  
21 road onto the Coutin Trust Property, and Lapidès erected a chain link fence and gate on  
22 part of the Coutin Trust Property. The Coutins disputed the matter, had the property  
23 surveyed, and began erecting a fence on the property line. Lapidès removed the surveyor's  
24 markers, threw the fence posts onto the Coutin Trust Property, scattered the cement and  
25 sand that was brought to erect the fence, and threatened the Coutins not to touch his fence  
26 and gate. On July 10, 1990, Lapidès filed suit against Elias and Anne Coutin, on September  
27 5, 1990, the Coutin Trust filed suit against Lapidès, and Lapidès filed a cross-complaint  
28 (the "Lapidès/Coutin Litigation"). Lapidès asked Jay Johnson if Jay could recommend an

1 attorney who would represent him in the Lapidés/Coutin Litigation. Jay recommended  
2 Craig Rossell, a good friend and member of the LDS Church with the firm Hunt, Ortmann,  
3 Blasco & Palffy. Although Rossell sent Lapidés a written fee agreement, Lapidés never  
4 signed and returned the agreement.

5 **4. The Yamashiro Property**

6 38. The Johnsons's finances were drained trying to develop the Johnson Property  
7 and they realized they needed a financial partner to make the payments on the Tryon Note  
8 and to get a loan to develop the property. In November 1990, the Johnsons agreed to sell  
9 one of the future lots on the Johnson Property to Vernon and Cathy Yamashiro on which  
10 the Yamashiros intended to build a home for themselves. In addition, the Johnsons entered  
11 a joint venture with the Yamashiros to develop the Johnson Property. The Yamashiros were  
12 responsible for the financial expenses, and Jay Johnson was the development project  
13 manager and architect for the homes to be built on the lots. This became a pattern Jay  
14 followed on many occasions throughout his career: Jay would find property, tie it up in  
15 escrow, and find a financial backer to develop the project with Jay being the architect and  
16 project manager.

17 39. It was about this time the Johnsons sold their home on Greenridge Drive.  
18 The home was high in the foothills and electrical power lines almost directly overhead  
19 were causing considerable concern in the community about possible injury from radiation,  
20 especially to young children. The Johnsons's fourth child had just been born and Debbie  
21 was extremely upset about the potential danger from the power lines and so Jay and Debbie  
22 decided to sell their home. Unfortunately, in addition to the power line issue depressing  
23 the value of the property, the real estate market had taken a severe downturn and they sold  
24 their home for less than was owed on the mortgage. For the next five years, Jay and Debbie  
25 rented a small home on Gould Avenue in La Cañada.

26 **5. The Johnsons's loss on the Lapidés Property**

27 40. The \$15,000 Lapidés Note was due November 2, 1990. Again, with their  
28 joint venture with the Yamashiros and their financial difficulties the Johnsons needed the

1 money owed on the note. As of January 16, 1991, the total amount of principal and interest  
2 owing was \$21,355, but Lapidès again took advantage of the Johnsons's situation and  
3 forced them into accepting a discounted payoff in the amount of \$18,000, thus losing  
4 another \$3,355 on the deal with Lapidès.

5 41. Lapidès owed the Johnsons \$275,000 for the Lapidès Property, but paid no  
6 more than \$195,000, and paid less interest than was owed. The result was the Johnsons  
7 lost at least \$55,000 (\$250,000 - \$195,000) out-of-pocket on the sale to Lapidès because  
8 Lapidès refused to pay what he owed.

9 **C. Lapidès's Threats Re: The Lack of Water on the Lapidès Property**

10 42. In early 1992, Jay Johnson learned that the La Forest Drive Properties (*i.e.*,  
11 the Johnson Property and the Lapidès Property) did not have access to water. This occurred  
12 at a public city planning commission meeting where Jay was presenting his subdivision  
13 plan for the Johnson Property and Doug Caister from the La Cañada Irrigation District  
14 ("LCID") stood up and announced to the amazement of everyone present: "I think I should  
15 tell you there is no access to water on that property." It was explained that the LCID would  
16 not permit a water meter for the properties in question because the LCID could not supply  
17 sufficient water in the case of fire at the higher elevations. That was the first Jay had ever  
18 heard that water was not available on the La Forest Drive Properties. Within a day or two  
19 he told Lapidès what he had learned from Caister. Lapidès began making threats to sue  
20 Jay and Debbie, Oliver, Mary Ellen Moore, the escrow company, the title company, the  
21 City of La Cañada, and others, for fraud in the sale of the Lapidès Property, and threatened  
22 to attach the Johnsons's assets, including the Johnson Property. Lapidès also wanted Jay  
23 and Debbie to assign to him all claims they had against everyone else regarding this matter.  
24 It was about this time Lapidès began threatening Jay and Debbie that if they did not meet  
25 his demands he would have the IRS investigate them and make their lives miserable. The  
26 Johnsons knew Lapidès worked for the IRS, and while they felt they had never done  
27 anything that would cause the IRS to criticize them they did not know what kind of trouble  
28 Lapidès could cause them because of his position with the IRS. Lapidès also demanded

1 that the Johnsons pay all the legal expenses incurred in a lawsuit he threatened to file  
2 against the City of La Cañada and the LCID to obtain water on the property.

3 43. Lapedes's accusation that the Johnsons defrauded him by lying about water  
4 on the property was absurd on its face: First, if the Johnsons had known there was no water  
5 on the Oliver Property, they would not have bought the property in the first place, and, if  
6 they had discovered there was no water before the sale to Lapedes, they would have told  
7 Lapedes and would not have guaranteed there was water. Second, if they had known there  
8 was no water on the property, they would not have bought the adjoining Tryon Property  
9 which likewise did not have water on the upper portion where they planned to develop the  
10 lots (like the Oliver Property, there was water on the lower lot (see above)), nor would  
11 they have expended time and money to develop the property. If there was any fraud  
12 involved in the matter, it was on the part of Lapedes, who, being ever vigilant, likely  
13 discovered there was no water on the property, concealed that fact from the Johnsons, and  
14 inserted the rather unusual Water Guarantee in the contract believing he could then force  
15 the Johnsons to pay for obtaining access to water.

16 **1. The offers to repurchase the Lapedes Property**

17 44. Jay and Debbie Johnson had been taught by their church to always deal  
18 honestly and fairly with others, and because they were mistaken about the availability of  
19 water on the Lapedes Property they felt a moral obligation to make things right with  
20 Lapedes and offered to repurchase the property for what Lapedes paid (or, more accurately,  
21 what he asserted he paid (\$225,000) since he did not pay the full amount (see below)),  
22 plus interest. Lapedes refused the offer unless the Johnsons paid him an additional  
23 \$200,000, which they were unable to do and were not inclined to do. The Johnsons offered  
24 to repurchase the property on various occasions over the ensuing years, but were always  
25 rebuffed by Lapedes. When Lapedes refused their offer, the Johnsons embarked on a long  
26 and costly effort to get water to the Lapedes Property.  
27  
28

1                   **2. The first efforts to obtain water on the Lapidès Property**

2           45. The Johnsons and the Yamashiros commenced efforts to obtain water not  
3 only on the Johnson Property, but likewise on the Lapidès Property and without expense  
4 to Lapidès. In that regard, they were working with the LCID to build their own water tank  
5 and to provide Lapidès access to the water without cost. Upon the recommendation of the  
6 LCID, they retained Perliter & Ingalsbe, an engineering firm in Glendale, to do a  
7 feasibility study to see if and where they could build a water tank on the La Forest Drive  
8 Properties. The report indicated that the project was feasible and specified the size of tank  
9 and where to build it on the property. In early 1993, the LCID approved the building of a  
10 tank, and indicated that the La Forest Drive Properties could be annexed into their service  
11 area if the tank was turned over to the LCID when it was finished. Jay Johnson  
12 immediately communicated this information to Lapidès.

13                   **D. Lapidès's Further Disputes with his Neighbors**

14           46. Oliver had sold the front lot of his property to a Mr. Hughs, who sold it in  
15 1988 to Steven Fabos. A driveway/parking lot to Fabos's house on the lower lot was just  
16 off the paved road over which Lapidès, the Coutins, and now Fabos, had an easement to  
17 access their various properties. Lapidès wanted to bring his fence down to the middle of  
18 the driveway/parking lot adjacent to Fabos's house, and told Fabos that if Fabos did not  
19 pay for one-half of the fence, Lapidès would put his fence down the middle of the  
20 driveway. Further, Lapidès fenced off the rear part of the Fabos property that bordered on  
21 the Lapidès Property, and in doing so tore down trees and a brick walkway that were used  
22 and enjoyed by Fabos. In doing this work, Lapidès hired Robert Frame, a member of the  
23 LDS Church, to remove stumps and do some grading on the Lapidès Property, and then  
24 argued with Frame over the work and never paid him for his services. Lapidès then  
25 complained that the Coutins were doing the very same thing he had done when they built  
26 a fence on their property line. In 1993 Fabos sold the property to Paul Masson, and the  
27 court in the Lapidès/Coutin Litigation found that one of the reasons Fabos moved was  
28 because of his dealings with Lapidès.

1           **E.     The Canyon Meadows Property**

2           47.     About mid-year 1993, Jay Johnson's step brother, Dean Hemstreet, learned  
3 of a tract of land near Provo, Utah, called Canyon Meadows, which was for sale by the  
4 FDIC, and told Jay that he (Jay) might be interested in the property. Jay looked at the  
5 property, believed it could be successfully developed, and was able to scrape up \$25,000  
6 to open escrow and tie-up the property. Although not specifically mentioned in the  
7 complaint in Gonzalez II, at trial the Defendants alleged the Debtors failed to disclose their  
8 interest in the Canyon Meadows Property as a basis to revoke their bankruptcy discharge.  
9 As shown below, there was no evidence to support the allegation, the evidence  
10 conclusively supported the Debtors's position, and the Defendants were aware of these  
11 facts before filing suit.

12           **F.     The Settlement Between the Johnsons and Lapides**

13           48.     On August 1, 1993, Jay and Debbie Johnson and Lapides reached a  
14 settlement regarding the issue of water on the Lapides Property. The settlement agreement  
15 provided, among other things, that Jay and Debbie would sign a note for \$225,000 plus  
16 interest from the date Lapides purchased the Lapides Property, payable \$500 per month  
17 with the balance due in three years unless work had commenced with construction of the  
18 improvements necessary to obtain water on the property and the Johnsons elected to  
19 extend the note for one more year and pay \$1,000 per month during the fourth year (the  
20 "1993 Johnson Note"). It was contemplated that the water tank the Johnsons and the  
21 Yamashiros planned on building would be built within four years and would solve the  
22 problem of getting water to the Lapides Property. Upon water being provided to the  
23 Lapides Property, the 1993 Johnson Note was to be canceled. If the Johnsons were not  
24 able to provide water to the Lapides Property within four years, Lapides's sole recourse  
25 was limited to the 1993 Johnson Note.

26           49.     As part of the settlement Lapides was also to sign a note for \$30,000, payable  
27 \$60 per month commencing upon the earlier of either the date water was provided to the  
28 Lapides Property or the date the 1993 Johnson Note was due and payable in full (the "First

1 Lapedes Note”). This note was designed to partially reimburse the Johnsons and the  
2 Yamashiros for the costs incurred in getting water to the Lapedes Property, as it was  
3 understood the cost of obtaining water would far exceed \$30,000. Lapedes was also to sign  
4 a second note for the total amount of payments made by the Johnsons pursuant to the 1993  
5 Johnson Note (the “Second Lapedes Note”). This note was designed for Lapedes to pay  
6 back the money the Johnsons paid Lapedes once water was provided to the property, it  
7 being understood that Lapedes could not keep the money the Johnsons paid him as if he  
8 had no water when in fact he did have water. It was also agreed that Lapedes would “pay  
9 all costs with respect to the [Lapedes] Property, including without limitation, all ... legal  
10 fees,” which was intended to specifically include all fees owed Rossell in the  
11 Lapedes/Coutin Litigation.

12 50. As part of the settlement the Lapedes Option was amended to extend the time  
13 within which to exercise the option to purchase one of the three parcels of property to  
14 coincide with the time within which to purchase the other two parcels of property.

15 51. The settlement agreement concluded with a mutual release of all claims,  
16 extinguishing Lapedes’s claim of fraud, a waiver of the benefits of Section 1542 of the  
17 California Civil Code, no admission of liability by any party, and an agreement to keep  
18 the settlement confidential.

19 **G. The Lawsuit on the 1993 Johnson Note and the Offer to Settle with the**  
20 **Johnsons and the Coutins**

21 52. The first payment of \$500 under the 1993 Johnson Note was due September  
22 1, 1993, and the second payment of \$500 was due October 1, 1993, and Jay Johnson wrote  
23 checks out to Lapedes for those payments. Jay was not in the habit of keeping a running  
24 balance in his checkbook, but believed at the time he wrote the checks he had enough  
25 money in the checking account to cover the checks. Jay had recently scraped together what  
26 money he could to tie-up the Canyon Meadows Property, and with that and whatever other  
27 expenses he had to pay he apparently did not have enough money in his checking account  
28 to pay the checks he gave to Lapedes. As a result, the checks to Lapedes for the first two

1 payments were not paid. Rather than give the Johnsons time to get their finances in order,  
2 and to reciprocate for the leniency the Johnsons had extended to him in paying his  
3 obligations, Lapidès immediately declared the full amount of the 1993 Johnson Note due  
4 and payable and on November 9, 1993, filed suit against the Johnsons in Los Angeles  
5 Superior Court. By doing this, Lapidès ensured he would be paid back all his money and  
6 still retain the property—an unconscionable result.

7 53. On December 9, 1993, Lapidès gave the Johnsons and the Coutins a package  
8 offer in which he agreed to “drop” the lawsuit against the Johnsons and terminate the  
9 Lapidès/Coutin Litigation regarding the easement dispute upon the following conditions:

10 a. Jay and Debbie were to pay all past amounts due under the 1993  
11 Johnson Note which Lapidès claimed was \$4500. The past due amounts, however, were  
12 \$500 per month plus the late payment penalty of \$50 for each missed payment which only  
13 totaled \$2200 for the four months.

14 b. Jay and Debbie were to execute a judgment for the full amount of the  
15 debt which Lapidès would then record.

16 c. Jay and Debbie were not to sell any of the Johnson Property lots until  
17 Lapidès was given water on his property or the debt paid in full.

18 d. The Coutins were to apply for no more than three lots on their property  
19 adjacent to the Lapidès Property.

20 e. The Coutins were to pay for and construct a main road all the way to  
21 Lapidès’s proposed new residence on the Lapidès Property as approved by Lapidès.

22 f. The Coutins were to grant Lapidès his choice of one of the new lots  
23 created off the new road to the Lapidès Property.

24 g. The Coutins were to pay for their share of building the water tank  
25 planned by the Johnsons and the Yamashiros.

26 54. The Coutins immediately rejected the offer, and Jay and Debbie had no  
27 money to retain an attorney nor could they meet Lapidès’s demands. Consequently, on  
28 May 12, 1994, Lapidès obtained a default judgment against the Johnsons in the amount of

1 \$383,701.73 for principal, interest, costs, and attorney's fees (the "Lapides Judgment").  
2 In effect, Lapides had now obtained the Lapides Property for free—an unconscionable  
3 result. The obtaining of the judgment on the 1993 Johnson Note was a novation that  
4 merged the obligation on the note into the Lapides Judgment and the obligation on the  
5 note was extinguished. Lapides recorded an Abstract of Judgment on May 18, 1994,  
6 creating a lien on all property owned by the Johnsons, including the Johnson Property.

7 **H. The 1994 Johnson Note and Amendment to the Lapides Option**

8 **1. The 1994 Johnson Note**

9 55. A few days after recording his judgment, Lapides demanded that Jay and  
10 Debbie Johnson sign a new note for \$400,000, unjustly adding approximately \$16,000 to  
11 the amount owed on the judgment. Lapides also demanded Janis Lapides be added as a  
12 payee of the note, and the note be secured by a deed of trust on the Johnson Property.  
13 Lapides threatened the Johnsons that if they did not sign the note and deed of trust he  
14 would execute on his judgment and have the Johnson Property sold at auction which would  
15 create enormous complications for the Johnsons with the Yamashiros.

16 56. Pressured by Lapides's threats the Johnsons signed a new promissory note  
17 dated May 27, 1994, for \$400,000, payable to both Richard and Janis Lapides (the "1994  
18 Johnson Note"), but they did not sign the deed of trust that would have secured the note.  
19 The obtaining of the 1994 Johnson Note was a novation that merged the obligation on the  
20 Lapides Judgment into the Note and extinguished the obligation on the judgment, but  
21 Lapides never filed with the court or served on the Johnsons as required by law an  
22 acknowledgment of satisfaction of judgment. It was not until after the bankruptcy was  
23 filed that the Johnsons learned the 1994 Johnson Note extinguished the Lapides Judgment.

24 **2. The amendment to the Lapides Option**

25 57. As indicated above, Jay and Debbie Johnson granted Lapides an option to  
26 purchase a portion of the Johnson Property. The option pertained to three different parcels  
27 of property, designated Parcels 1, 2, and 3. The option to purchase Parcel 3 had expired on  
28 April 12, 1993. With the threat of execution on the Lapides Judgment, on May 27, 1994,

1 in addition to signing the 1994 Johnson Note, Lapidès coerced the Johnsons into amending  
2 the option agreement to “extend” the Lapidès Option with respect to Parcel 3 to April 12,  
3 1998, the same date as the expiration of the option for Parcels 1 and 2.

4 **I. The Decision of the Court in the Lapidès/Coutin Litigation and Richard**  
5 **and Janis Lapidès Engage in Fraudulent Conveyances**

6 58. On June 28, 1994, title to Lapidès’s home on Castle Road was transferred  
7 from Lapidès as his sole property to Richard Lapidès and Janis Lapidès in joint tenancy.

8 59. On November 14, 1994, the court rendered its decision in the Lapidès/Coutin  
9 Litigation. The court quieted title in both Lapidès and the Coutin Trust in certain respects,  
10 and granted Lapidès a non-exclusive prescriptive easement over that part of the paved road  
11 that was on the Coutin Trust Property, limited to ingress and egress to vacant land and no  
12 other use without further order of court. In addition, Lapidès was ordered to remove the  
13 chain link fence and gate he had erected on the Coutin Trust Property.

14 60. As indicated above, Lapidès retained Craig Rossell and his firm to represent  
15 Lapidès in the Lapidès/Coutin Litigation. Lapidès refused to pay Rossell for services  
16 rendered, and on December 5, 1994, the Hunt Ortmann firm sued Lapidès in Los Angeles  
17 County Superior Court for the unpaid fees. One week later, on December 12, 1994,  
18 Lapidès signed a Grant Deed back-dated to December 1, 1994, transferring title to the  
19 Lapidès Property on La Forest Drive to Janis Lapidès, in her maiden name, Janis Thornley,  
20 as her sole and separate property, recording the Deed five weeks later, on January 10, 1995.  
21 Title to the Lapidès home on Castle Road was also transferred to Janis Lapidès in her  
22 maiden name, Janis Thornley, as her sole and separate property, by Grant Deed recorded  
23 January 10, 1995. The transfers of the La Forest Drive and Castle Road properties were  
24 obvious fraudulent transfers to hinder, delay, or defraud the Hunt Ortmann firm in  
25 obtaining payment for unpaid legal fees. Lapidès and the Hunt Ortmann firm agreed to  
26 arbitration which took place on March 30 and May 1, 1995. Because Lapidès did not sign  
27 and return the written fee agreement sent to him by Rossell, the Hunt Ortmann firm was  
28 limited to a *quantum meruit* recovery, and on May 17, 1995, the arbitrators issued an award

1 to the Hunt Ortmann firm in the amount of \$15,624, the Hunt Ortmann firm taking a loss  
2 of \$21,616.68. On June 21, 1995, the Hunt Ortmann firm filed a petition in the Los  
3 Angeles Superior Court to confirm the award, and Lapides finally paid the amount due on  
4 July 12, 1995.

5 **J. The 1994 Johnson Note and the Demise of the Johnson/Yamashiro Joint**  
6 **Venture**

7 **1. The 1994 Johnson Note**

8 61. The 1994 Johnson Note called for payments of \$500 per month from July 1,  
9 1994 to and including July 1, 1996, at which time the unpaid balance would be due unless  
10 Jay and Debbie Johnson elected to extend the note for one year with payments increasing  
11 to \$1,000 per month. The Johnsons made twenty-five payments of \$500 each and twelve  
12 payments of \$1,000 each totaling \$24,500.

13 **2. The demise of the Johnson/Yamashiro joint venture**

14 62. As indicated above, in November 1990, Jay and Debbie Johnson sold one of  
15 the future lots of the Johnson Property to the Yamashiros, and entered a joint venture with  
16 the Yamashiros to develop the Johnson Property. As part of the development, the  
17 Yamashiros negotiated a \$400,000 construction loan for the construction of a water tank  
18 (estimated to cost approximately \$500,000) that would supply water to all the La Forest  
19 Drive Properties, including the Lapides Property. The Lapides Judgment had been  
20 recorded and was shown as a lien against the Johnson Property (although the lien should  
21 have been released with the extinguishment of the Lapides Judgment). The construction  
22 lender insisted it have a first lien on the Johnson Property to secure the construction loan,  
23 and Tryon agreed to subordinate her note. The Johnsons and the Yamashiros asked Lapides  
24 to subordinate his judgment lien to the lender's deed of trust so that construction of the  
25 water tank could proceed, and the Yamashiros agreed to sign a contract with Lapides  
26 guaranteeing they would build the water tank and offered to let him have the full benefits  
27 of the water tank at no cost to him.  
28

1           63. Lapedes agreed to subordinate the lien *only if* the Yamashiros paid him  
2 \$200,000. The Yamashiros were shocked, and flatly refused.

3           64. On April 1, 1995, Lapedes agreed to subordinate the judgment lien if the  
4 Johnsons and the Yamashiros met the following demands:

5               a. The Yamashiros were to supply water to the Lapedes Property by July  
6 1, 1997 at no cost to Lapedes.

7               b. The Yamashiros were to take \$100,000 of the new \$400,000  
8 construction loan to pay down the \$650,000 Tryon Note, notwithstanding the construction  
9 loan was restricted to building the water tank, and the Tryon Note was to be subordinated  
10 to the new construction loan.

11              c. The Yamashiros, as beneficiaries, were to release with a full  
12 satisfaction the \$232,992 trust deed on the Johnson Property of which the Johnsons were  
13 the trustors.

14              d. The Yamashiros were to execute a note in favor of the Lapedes for  
15 \$400,000 with terms similar to the terms in the 1994 Johnson Note (with payments on the  
16 1994 Johnson Note to be considered equal payments on the Yamashiro note). The offer  
17 also provided that if water was made available to the Lapedes Property the Yamashiro note  
18 would be cancelled (but not the 1994 Johnson Note).

19              e. The Yamashiros were also to grant Lapedes an option to purchase the  
20 property that was the subject of the Lapedes Option.

21           65. The Yamashiros considered Lapedes's demands to be totally unreasonable  
22 and rejected his demands. The Johnsons and the Yamashiros tried for several months to  
23 work things out with Lapedes, and the Yamashiros promised Lapedes that they would do  
24 all they could to get water to the Lapedes Property. Lapedes, however, would not cooperate  
25 and continued making his demands. The Yamashiros were so disgusted with Lapedes, and  
26 so fearful of having any dealings with him, that rather than try to work out some  
27 arrangement with Lapedes whereby the project could go forward, they walked away from  
28 the project, losing their investment of approximately \$300,000.

1           66. When the Yamashiros withdrew their financial backing to develop the  
2 Johnson Property, Jay and Debbie Johnson were unable to continue the project, and on  
3 March 15, 1996, foreclosure proceedings were begun and Jay and Debbie executed a deed  
4 in lieu of foreclosure. As a result, Jay and Debbie lost their investment in the Johnson  
5 Property, approximately \$100,000, plus their time and effort.

6           **K. The Viro Road Property**

7           67. In early 1995, Jay and Debbie Johnson were told they would have to vacate  
8 the home they were renting on Gould Avenue. Jay found a home for sale at 4600 Viro  
9 Road (the “Viro Road Property”) he believed could be remodeled and would be a nice  
10 home for he and his family if in time they could acquire it. Because Jay and Debbie were  
11 unable to purchase the house, Randy agreed to buy the house and rent it to Jay and Debbie.  
12 In Gonzalez I and II, the Defendants alleged the purchase of the Viro Road Property was  
13 a fraudulent conveyance, that Jay and Debbie, not Randy and Robin, bought the property,  
14 and sought to obtain the value of the property in the litigation. As shown below, there was  
15 no evidence to support the allegations, the evidence conclusively supported the Debtors’s  
16 position, and the Defendants were aware of these facts before suit was filed.

17           **L. The June 2000 Agreement**

18           68. On June 15, 1996, Lapides sent Jay and Debbie Johnson a notification that  
19 the principal amount of the 1994 Johnson Note due on July 31, 1996 would be \$459,229.84  
20 (Lapides double-counting the last \$500 payment), and that if they elected to extend the  
21 due date of the note for another year the monthly payment would increase to \$1,000 per  
22 month commencing August 1, 1996. Jay and Debbie continued to make payments in the  
23 increased amount for the next year.

24           69. In 1997, after the 1994 Johnson Note became due and payable, Lapides tried  
25 to get Jay and Debbie to agree to a modification of the note which added JJ-AIA as an  
26 obligor and included additional amounts above and beyond anything Jay and Debbie were  
27 obligated to pay. Lapides also demanded that if, in attempting to provide water to the  
28 Lapides Property, the LCID required Jay and Debbie to “purchase any land, construct a

1 water tank, pump station, or other improvements in order to make such water available to  
2 the Lender's property, or make payment for annexation," they would do so "at no cost" to  
3 Lapidès. On October 16, 1997, to force Jay and Debbie to sign the modification agreement,  
4 Lapidès obtained a writ of execution and wrongfully executed on the Lapidès Judgment,  
5 not only against Jay and Debbie's personal accounts, but also against the account of JJ-  
6 AIA. The execution on the judgment was in fulfillment of Lapidès's constant threats that  
7 he could come after Jay Johnson's business anytime he wanted. Jay later came to  
8 understand that that was a wrongful execution in two respects: first, the judgment had been  
9 extinguished, and, second, the judgment was not against JJ-AIA. Jay and Debbie Johnson  
10 refused to sign the modification agreement as it would have been impossible for them to  
11 ever satisfy its terms. In the meantime, Jay and Debbie continued making payments on the  
12 1994 Johnson Note, increasing the amount paid monthly as time progressed and Lapidès  
13 demanded, and which Lapidès accepted. Debbie begged Jay to file bankruptcy to remove  
14 this burden from their lives, but Jay was worried doing so would ruin his reputation as a  
15 developer and architect, and he felt that somehow, he could get water to the Lapidès  
16 Property and solve their problem in that manner.

17 70. Lapidès made similar attempts to modify the 1994 Johnson Note in 1998,  
18 1999, and early 2000 (again, wrongfully executing against Jay and Debbie's personal  
19 accounts as well as against JJ-AIA's account in April 1998, November 1998, and May  
20 2000) with ever increasing obligations that were impossible for the Johnsons to meet and  
21 which they did not accept, including a \$500 late payment penalty and the bizarre demand  
22 that Jay Johnson sign an unconditional and irrevocable power of attorney in favor of  
23 Lapidès "to remain in full force and effect until canceled by the Lender when the entire  
24 unpaid balance of this note ... is paid in full ...."

25 71. Jay had been struggling in his business while Randy had been very successful  
26 in his business. About the first of the year 1999, Randy and Jay discussed Jay's situation.  
27 Randy had a vision of expanding Jay's business from just designing single residence  
28 homes to designing and managing larger projects and hiring other architects for the

1 business, something Jay had never contemplated. As part of Randy's plan to reinvigorate  
2 Jay's business and undertake a new business venture for himself, in February 1999 Randy  
3 formed JJ&A. At trial the Defendants alleged Jay Johnson was the owner of JJ&A and had  
4 committed fraud on the bankruptcy court and the creditors, and, specifically, on Lapides,  
5 by not including his ownership of JJ&A on the Bankruptcy Schedules. As shown below,  
6 there was no evidence to support the allegation, the evidence conclusively supported the  
7 Debtors's position, and the Defendants were aware of these facts before filing suit.

8 72. Lapides's unreasonable demands and periodic executions against Jay and  
9 Debbie's bank accounts brought them to a point where it was impossible to go any further  
10 with Lapides. Lapides kept demanding Jay and Debbie pay more each month, and in 1999  
11 they were paying him \$2500 a month. Jay and Debbie were stymied and, although the  
12 thought was repugnant to Jay, he considered filing for bankruptcy. At that point, Randy  
13 again stepped in to help Jay and Debbie, and beginning in January 2000 started making  
14 Jay and Debbie's payments to Lapides because Jay and Debbie were not able to make  
15 them.

16 73. In addition, over the next several months Randy negotiated a settlement  
17 agreement between Jay and Debbie and Lapides. The La Forest Drive Property had  
18 recently come back on the market and Jay learned from Doug Caister that the LCID was  
19 thinking of building a water tank at the District's expense to mitigate a potential liability  
20 of not being able to provide enough water to fight a fire in this high-risk fire hazard area.  
21 During the negotiations, Jay tried to put together a new partnership, like the one with the  
22 Yamashiros, but was unable to do so. When it was evident Jay could not put together a  
23 deal to purchase the La Forest Drive property, Randy decided to purchase and develop the  
24 property himself and in the process, help Jay with his problems with Lapides. On June 8,  
25 2000, Jay and Debbie Johnson individually and Jay Johnson in behalf of JJ-AIA signed a  
26 new agreement with Lapides (the "June 2000 Agreement").

27 74. The June 2000 Agreement called for a \$10,000 payment upon signing. Again,  
28 since Jay and Debbie did not have the money, Randy loaned them \$10,000.00 to make the

1 payment. The June 2000 Agreement also called for monthly payments of \$2500, but Jay  
2 and Debbie were not able to make those payments so Randy arranged for the payments to  
3 be made. These payments were not gifts but were loans which Jay and Debbie intended to  
4 pay back when they could. The monthly payments were made through March 2001. The  
5 payments due April 1, 2001 and thereafter were never made.

6 **M. The Frame 10 Loan**

7 75. On June 8, 2000, Randy Johnson gave a second deed of trust against the Viro  
8 Road Property to secure a loan of \$500,000 from Frame 10 Productions, LLC  
9 ("Frame 10"), a company owned by Randy's friend, Michael McFall, and received at that  
10 time the sum of \$348,207. Pursuant to Randy's instructions to the escrow company the  
11 draw was sent to Q Financial. At trial the Defendants alleged that because Jay and Debbie  
12 owned the Viro Road Property, the Frame 10 loan was really to Jay and Debbie and that  
13 Randy and McFall conspired with Jay and Debbie to conceal the loan and it was a fraud  
14 on the bankruptcy court and the creditors, and, specifically, on Lapides, by not disclosing  
15 it on the Bankruptcy Schedules. As shown below, there was no evidence to support the  
16 allegation. the evidence conclusively supported the Debtors's position, and the Defendants  
17 were aware of these facts before filing suit.

18 **N. The La Forest Drive Property**

19 76. On June 12, 2000, Q Financial made an offer to purchase the La Forest Drive  
20 Property for the sum of \$675,000, and made a \$25,000 deposit on the purchase. On  
21 August 31, 2000, Randy Johnson purchased the La Forest Drive Property from Robert  
22 Picardo and Linda Pawlik as his sole and separate property. In Gonzalez I and II, the  
23 Defendants alleged the purchase of the La Forest Drive Property was a fraudulent  
24 conveyance, that Jay and Debbie, not Randy, bought the property, and sought to obtain the  
25 value of the property in the litigation. As shown below, there was no evidence to support  
26 the allegations, the evidence conclusively supported the Debtors's position, and the  
27 Defendants were aware of these facts before filing suit.

1 **IV. THE FILING OF BANKRUPTCY AND ITS AFTERMATH**

2 **A. The Filing of Bankruptcy**

3 77. Randy suffered severe financial reversals and it was clear to Jay and Debbie  
4 that with Randy's problems there was no way out for Jay and Debbie except to file for  
5 bankruptcy. The April 1, 2001 payment due Lapides under the June 2000 Agreement was  
6 not paid and Jay and Debbie were in default under the Agreement. Lapides was furious,  
7 declared Jay and Debbie in default for missing the payment and for not purchasing the La  
8 Forest Drive Property themselves, and said he would execute on his judgment against Jay  
9 and Debbie's accounts. On April 5, 2001, Jay and Debbie filed the Bankruptcy Petition.

10 78. It is not feasible to detail everything that occurred following the bankruptcy  
11 and everything that happened at the trial of Gonzalez I and II. Suffice to say the Defendants  
12 had no evidence to prove their claims or any of the elements that had to be satisfied to  
13 prove those claims, and no reasonable person under the circumstances would have  
14 proceeded as did the Defendants.

15 **B. Lapides's Violation of the Automatic Stay**

16 79. Faced with the prospect that the debt owed by the Debtors would be  
17 discharged and his monthly income terminated with the filing of bankruptcy, Lapides  
18 wasted no time in acting against the Debtors in violation of the automatic stay. On the day  
19 the Debtors filed for bankruptcy, David Reeder, counsel for the Debtors, verbally  
20 confirmed the bankruptcy filing with Lapides. The following day, April 6, 2001, Lapides  
21 signed an Application for Order to Appear for Examination for each of the Debtors, and  
22 prepared a Writ of Execution. The Superior Court signed the Orders to Appear for  
23 Examination and the Writ of Execution on April 9, 2001. On April 18, 2001, pursuant to  
24 Lapides's instructions, the sheriff served the Notice of Levy on Citizens Business Bank,  
25 instructing the bank to pay over funds not only in the Debtors's personal accounts but also  
26 funds in the account of JJ-AIA, and served the Orders to Appear for Examination on the  
27 Debtors.

1           80. On April 26, 2001, the Debtors filed an Application for the Issuance of an  
2 Order to Show Cause (“OSC”) why Lapidès should not be sanctioned for violating the  
3 automatic stay, and on May 11, 2001, the court issued the OSC. On May 31, 2001,  
4 Lapidès, represented by David Luna, filed his opposition to the OSC. In his declaration  
5 under penalty of perjury Lapidès denied Reeder had told him the Debtors had filed for  
6 bankruptcy, insisting instead that Reeder merely told him, “‘we’re filing a bankruptcy,’ in  
7 the future tense.”

8           81. Lapidès further testified he did not learn of the bankruptcy until April 16,  
9 2001, when he received the Notice of Chapter 7 Bankruptcy Case issued by the clerk of  
10 the court on April 9, 2001. Lapidès testified he had never heard the term “automatic stay”  
11 until he received the Notice. Lapidès then falsely testified that after receiving the Notice  
12 he “took no action to enforce” his judgment. On August 1, 2001, the court found Lapidès  
13 “willfully violated the automatic stay,” and ordered sanctions against Lapidès in the  
14 amount of \$6,448.

15           **C. The Issue of Shareholder Loans to Jay Johnson**

16           82. At trial, Gonzalez and Lapidès focused intensely on the shareholder loans  
17 from JJ-AIA to Jay Johnson listed in the Bankruptcy Schedules in the amount of \$450,000.  
18 The Defendants savagely attacked the Debtors for lying as to the amount of shareholder  
19 loans and hotly accused them of refusing to produce documents, including JJ-AIA’s tax  
20 returns to confirm the amount of shareholder loans. The Defendants repeatedly argued  
21 they did not discover the truth about the loans until after they subpoenaed JJ-AIA’s tax  
22 returns from Michael Sy, the company’s tax preparer, in July 2004. The evidence,  
23 however, conclusively showed the Debtors had made an innocent mistake on the  
24 Bankruptcy Schedules, that they did produce the requested tax returns, that the Defendants  
25 were immediately aware of the error and did nothing about it because it made no difference  
26 in the case, that the Defendants maliciously accused the Debtors of falsely listing the  
27 amount of the loans on the Bankruptcy Schedules as a ground for revoking the Bankruptcy  
28

1 Discharge, and that Gonzalez and Lapidés testified falsely regarding the facts to cover-up  
2 the false charge.

3 **1. The error in the amount of the shareholder loans**

4 83. To lie is to make untrue statements knowingly, especially with intent to  
5 deceive. When Jay and Debbie Johnson met with their bankruptcy counsel, Reeder  
6 escorted them to a conference room, gave them a pad of paper, and without giving them  
7 any specific instructions asked them to write down all their assets and liabilities. Jay  
8 recalled that in his tax returns there were “loans to shareholders” (*i.e.*, loans from JJ-AIA  
9 to Jay) and the loans had been going up over the years, and he believed they equaled at  
10 least \$350,000 by that time. Jay did not have the company’s tax returns to see what the  
11 actual number was and worried it might be more than \$350,000, so added \$100,000,  
12 making the amount \$450,000, “just to be safe.” When they finished writing down  
13 everything they could think of, they gave the list to Reeder who asked if the list was correct  
14 to the best of their knowledge and they responded “yes”. Reeder prepared the bankruptcy  
15 schedules and asked the Debtors to sign them. The Debtors briefly looked over the items  
16 listed to see that they agreed with what they had written down, and signed the Schedules.  
17 The Debtors never argued Reeder was responsible for the error; Jay admitted he made the  
18 error.

19 **2. The meeting of creditors and the production of tax returns;**  
20 **Gonzalez’s retention of DesJardins, Fernandez & Smith; no**  
21 **objection to the Debtors’s discharge**

22 **a. The meeting of creditors and the production of tax returns**

23 **(1) The first meeting of creditors**

24 84. The 11 U.S.C. § 341(a) meeting of creditors commenced May 8, 2001. Of  
25 singular importance was the questioning regarding the \$450,000 shareholder loans from  
26 JJ-AIA to Jay reported in the Bankruptcy Schedules. Gonzalez specifically asked Jay to  
27 produce the most recent tax returns for JJ-AIA, explaining he needed “to review the  
28 documents” and stressing “I need you to give me every document you can find regarding

1 the transfers for the \$450,000.” The reason for requesting the company tax returns was to  
2 verify the amount of shareholder loans. Lapides attended the meeting, represented by  
3 Jason Tsai, who also inquired about the shareholder loans.

4 **(2) The Debtors produce the requested tax returns and**  
5 **Gonzalez and Lapides discover the error**

6 **(a) The Debtors produce the requested tax returns**

7 85. At the first meeting of creditors Jay indicated he had obtained an extension  
8 of time to file the company’s 2000 tax return. Shortly after the meeting, Jay received the  
9 2000 tax return, signed it, and immediately delivered it to Gonzalez together with the  
10 company’s 1999 tax return. These two tax returns were delivered to Gonzalez *before* the  
11 second meeting of creditors on June 12, 2001.

12 86. In his General Case Status Report filed January 21, 2009, Gonzalez reported  
13 that “[o]n or about May 31, 2001, the Debtors produced a number of the requested  
14 documents (financial statements, bank statements, canceled checks, *tax returns* ...)”  
15 (emphasis added). Gonzalez then stated that “the meeting of creditors was continued in  
16 order to investigate the produced information ....” Importantly, Gonzalez only asked for  
17 JJ-AIA’s tax returns, not the Johnsons’s personal returns.

18 **(b) Gonzalez and Lapides discover the error**

19 87. Taking Gonzalez at his word that he wanted to verify the amount of  
20 shareholder loans to Jay Johnson, as required by his duty as trustee, the 1999 tax return  
21 indicated loans to shareholders had decreased from \$27,946 in 1998 to \$20,915 in 1999,  
22 and the 2000 tax return indicated loans to shareholders had further decreased in 2000 to  
23 \$17,500. Jay’s tax preparer had been reducing, not increasing, the amount of shareholder  
24 loans over the past few years, but Jay was cognizant of that fact.

25 88. Gonzalez unquestionably knew the figure of \$450,000 in the Bankruptcy  
26 Schedules was not correct. The mistake obviously did not bother Gonzalez as he never  
27 confronted the Debtors with the error and because the error made no difference in the  
28 Debtors’s reported net worth.

**(3) The continued meeting of creditors**

89. The meeting of creditors continued June 12, 2001. Lapidés again attended the meeting, represented by Tsai. Lazaro E. Fernandez of DesJardins, Fernandez & Smith, LLP, Gonzalez's "proposed bankruptcy counsel," attended the meeting and examined the Debtors.

90. Prior to the meeting the Debtors produced the JJ-AIA tax returns requested by Gonzalez. This was confirmed by Gonzalez at the beginning of the meeting when he stated: "This is a continuation, and documents were produced, I have no further questions." Specifically mentioned during the meeting was the production of documents regarding JJ-AIA and the shareholder loans to Jay, and Fernandez questioned Jay regarding the profits of JJ-AIA and the shareholder loans to Jay.

91. The production of documents by the Debtors prior to the meeting was further attested to on March 25, 2003, when Gonzalez filed a Motion to Extend Deadline under Section 546 of the Bankruptcy Code to Initiate Adversary Proceedings against Randy Johnson, Q Financial, and JJ-AIA ("Motion to Extend Deadline"), in which Gonzalez stated in his declaration in support of the motion: "I continued the initial May 8, 2001 meeting of creditors in order for the Debtors to produce a number of documents. ... Pursuant to my request the Debtors produced a number of documents such as bank statements, financial statements, [and] bank returns ...." Gonzalez continued the meeting of creditors so he could "investigate the produced information," and when the meeting was held there were no questions asked about missing documents or the insufficiency of the documents produced, and no additional documents were requested. Gonzalez was given what he asked for and he was satisfied with what he received.

**b. Gonzalez's retention of DesJardins, Fernandez & Smith**

92. On September 13, 2001, Gonzalez filed his Application for an Order Authorizing the Employment of DesJardins, Fernandez & Smith, LLP, as General Bankruptcy Counsel for the purpose of "investigation of the debtors' assets, liabilities, transfers, and dealings". On September 27, 2001, the court approved the application.

**c. Gonzalez has no objection to the Debtors's discharge**

93. In his trial declaration, Gonzalez stated that "as a condition precedent to receiving a discharge of indebtedness, the Debtors in this case were required to demonstrate forthrightness and honesty throughout their chapter 7 bankruptcy case, including voluntary disclosures of financial information provided on their bankruptcy Petition, accompanying Schedules, and in their dealings with me as their chapter 7 Trustee." Gonzalez was obviously satisfied the Debtors met the condition precedent to receiving their discharge. Having conducted his own investigation, and having employed the DesJardins firm to also investigate the matter, and neither Gonzalez nor the DesJardins firm finding anything amiss with the Debtors, including the fact that the loans to shareholders was known to be in error, no objection to their discharge was noted, and on November 6, 2001, the Debtors received their discharge.

94. Gonzalez took no action because "[w]hile the Trustee and his counsel conducted an initial investigation of possible assets of the estate, the Trustee was not successful in recovering the required evidence in order to justify the commencement of a avoidance action." Gonzalez's statement is a judicial admission he lacked evidence to file suit, even though the amount of shareholder loans was in error.

**D. Lapidès's Grim Determination to have Gonzalez Sue the Johnsons**

95. Lapidès's enmity toward the Johnsons was no doubt exacerbated by the court finding him to have willfully violated the automatic stay and sanctioning him. Quickly following that debacle was Gonzalez's decision not to object to the Debtors's discharge because he lacked evidence to file suit. The proceedings from that point forward demonstrate Lapidès's grim determination to cajole Gonzalez into suing the Johnsons and having the Debtors's discharge revoked.

1           **1. Lapidès's retention of Teresa A. Blasberg and the Motions to**  
2           **Conduct FRBP 2004 Examinations; the Motion to Extend**  
3           **Deadline; the Debtors's Motion for a Protective Order; and the**  
4           **examination of Randy Johnson**

5           **a. Lapidès's retention of Teresa A. Blasberg and the Motions**  
6           **to Conduct FRBP 2004 Examinations**

7                   **(1) Lapidès's retention of Teresa A. Blasberg**

8           96. On November 26, 2001, obviously dissatisfied with Gonzalez's decision not  
9 to object to the Debtors's discharge, and equally dissatisfied with Luna's failure to  
10 extricate him from the contempt proceeding, Lapidès replaced Luna as his attorney with  
11 Teresa A. Blasberg. However, no action was taken for the next fifteen months, except  
12 Lapidès sued Luna in Los Angeles Superior Court.

13                   **(2) The Motions to Conduct FRBP 2004 Examinations**

14           97. From November 2001 to February 2003, Gonzalez apparently gave no  
15 further thought to the case, and the Debtors believed they had finally rid themselves of  
16 Lapidès. Gonzalez declared in his declaration in support of the Motion to Extend Deadline:  
17 "In February 2003, Ms. Blasberg and I had, *for the first time*, a number of direct  
18 communications regarding possible pre-petition transfers of properties of the estate. Based  
19 on those conferences, I agreed with Ms. Blasberg that further investigation was necessary  
20 in this case" (emphasis added). Gonzalez then concluded: "Information was provided, *for*  
21 *the first time* in February 2003, to me raising a suspicion of possible transfers by the  
22 Debtors prior to and during their bankruptcy filing" (emphasis added).

23           98. On March 3, 2003, nearly two years after the Debtors filed for bankruptcy,  
24 Lapidès filed motions for FRBP 2004 Examinations of Randy Johnson, the Custodian of  
25 Records of Q Financial, the Custodian of Records of the LDS Church, the Custodian of  
26 Records of JJ-AIA, and Jay Johnson. The motions were supported by Lapidès's false and  
27 misleading declarations.  
28

1           99. First, Lapidès declared he believed the Viro Road Property “belongs to the  
2 Debtors” because Jay allegedly “told me that he was making the mortgage payments on  
3 the Viro Road Property,” and on another occasion in June 1999 Jay “told me that he could  
4 borrow against the Viro Road Property to pay my judgment if I would discount the debt.”  
5 The statements were false and preposterous on their face—if the Debtors were trying to  
6 hide the property from Lapidès they would never have told him they were making the  
7 mortgage payments and could borrow against the property.

8           100. Second, Lapidès declared that at the first meeting of creditors Jay “testified  
9 that he personally spent between \$50,000 and \$100,000 for the cost of building a second  
10 story onto the Viro Road Property ....” There is no mention of “building a second story  
11 onto the Viro Road Property” at the first meeting of creditors, and the Viro Road Property  
12 was not discussed at all at the continued meeting of creditors.

13           101. Third, Lapidès declared that in 1990 the Debtors granted him “an option to  
14 acquire approximately four acres of adjacent property located at 5485 La Forest Drive ...  
15 *which did have water available,*” but that, “instead of honoring the option, the Debtors  
16 allowed the property to be foreclosed by the lienholder” (emphasis added). What this had  
17 to do with any fraudulent transfer is not explained, but it is an example of how brazen  
18 Lapidès is in his lies. Water was not available on the adjacent property, everybody knew  
19 it, and getting water on all the La Forest Drive Properties was what the June 8, 2000  
20 Agreement was all about. If water had been available in 1990, there would have been no  
21 bankruptcy ten years later. Based on these lies the court granted the motions.

22                   **b. The Motion to Extend Deadline**

23           102. On March 25, 2003, Gonzalez filed the Motion to Extend Deadline to give  
24 Lapidès and Blasberg time to find “the required evidence in order to justify the  
25 commencement of a voidance action.” Apparently, Gonzalez was still not persuaded by  
26 the “evidence” Lapidès produced to justify the Motion for FRBP 2004 Examinations, but  
27 was willing to give him a chance to find the evidence sufficient to justify bringing suit. On  
28

1 March 31, 2003, the court granted the Motion extending the time to initiate adversary  
2 proceedings from April 4, 2003 to June 4, 2003.

3 **c. The Debtors's Motion for a Protective Order**

4 103. The Debtors brought a motion for a protective order to vacate the granting  
5 of the motions as to Jay Johnson and JJ-AIA. The court granted the motion, vacated the  
6 prior orders regarding Jay and JJ-AIA, and ordered there would be no examination and no  
7 production of documents from them.

8 104. As shown above, the Debtors produced all documents requested at the  
9 meeting of creditors, and Gonzalez never again asked for documents until after he sued  
10 Randy Johnson (see below). Now it was Lapides that wanted documents, and the court  
11 denied his request.

12 **d. The examination of Randy Johnson**

13 105. The FRBP 2004 examination of Randy Johnson was taken by Blasberg on  
14 April 29, 2003, and although Gonzalez stated he would "attend the examination of Randal  
15 Johnson" and "review the documents requested as part of the examination," Gonzalez  
16 arrived late and left almost immediately thereafter.

17 **2. Lapides's and Gonzalez's retention of James A. Hinds, Jr.**

18 106. The court having issued a protective order in favor of the Debtors, the  
19 Debtors gave no testimony and produced no documents. The only FRBP 2004  
20 Examination that occurred was that of Randy Johnson, and he refused to answer most  
21 questions or to produce documents at that time (subsequently, after the entry of a protective  
22 order in favor of Randy and Robin Johnson, they answered all questions put to them by  
23 Hinds and produced all documents requested). Thus, at the conclusion of the effort by  
24 Lapides and Blasberg, Gonzalez had nothing more than he had to begin with—he still did  
25 not have "the required evidence in order to justify the commencement of a voidance  
26 action." Nonetheless, in his trial declaration, Gonzalez testified that "[a]fter examining  
27 with my counsel certain documents provided by the Debtors and Randy Johnson ... I  
28 determined that the Estate possessed enough information to support a good faith

1 Complaint against Randy Johnson ....” Gonzalez was more truthful in 2003 than he was  
2 in 2014. In 2003 Gonzalez represented to the court that the reason he did not take action  
3 earlier was because he did not have the evidence to justify filing suit; and, indeed, he took  
4 no action for two years. That is inconsistent with what he represented to the court in 2014.  
5 At trial Gonzalez represented to the court that “[a]fter examining with my counsel certain  
6 documents *provided by the Debtors and Randy Johnson* ... I determined that the Estate  
7 possessed enough information to support a good faith Complaint against Randy Johnson  
8 ...” (emphasis added). Because the Debtors and Randy Johnson did not produce any  
9 further documents, it is obvious Gonzalez was not candid with the court at the time of trial.

10 107. Blasberg was plainly not willing to go forward, so Lapides found James A.  
11 Hinds, who was. The deadline for filing a complaint was June 4, 2003. Although there was  
12 not “enough evidence in order to justify the commencement of a voidance action,” the  
13 complaint was filed June 2, 2003, with Blasberg as Gonzalez’s attorney, but only his  
14 attorney for a moment. On June 13, 2003, Lapides signed an agreement with Hinds to pay  
15 the fees associated with the action, and on August 18, 2003, Gonzalez, Blasberg, and Paul  
16 Shankman of the Hinds firm signed a substitution of attorney.

17 **E. Threats and Misrepresentations**

18 **1. Threats**

19 **a. The threat to make Randy Johnson’s life “a living hell”**

20 108. Randy and Robin answered all Hinds’s questions and produced hundreds of  
21 documents, none of which proved Jay Johnson engaged in any kind of fraud. Hinds then  
22 met with Randy and made it clear to him that it was his brother, Jay, not Randy, that was  
23 the target of Gonzalez’s efforts. Hinds then threatened Randy that if he did not give  
24 testimony and deliver documents to Hinds that proved the case against Jay, Hinds was  
25 going to make Randy’s life “a living hell.” Hinds referred to this conversation in an e-mail  
26 dated May 26, 2004, in which Hinds stated: “I know that you and Paul [Shankman] have  
27 had a lot of talks about these matters but now that I’m back I am concerned that you  
28

1 haven't produced enough to merit me not doing exactly what I told you I was prepared to  
2 do to make your life a living Hell." Hinds proceeded to make good on his threat.

3 **b. Threats of criminal prosecution and financial ruination**

4 109. Between mid-July and mid-August, 2004, in violation of the discharge  
5 injunction, Lapides telephoned Jay Johnson on several occasions demanding the Debtors  
6 pay him the sum of \$1,200,000, and threatened that unless payment was made he would  
7 have their discharge revoked, instruct Hinds to file criminal charges against he and Debbie,  
8 report them to the IRS, the US Attorney, and the Los Angeles County District Attorney,  
9 and they would "go to jail for a long time," Jay's career would be ended, and they would  
10 be financially ruined by having criminal records. Although Lapides's threats greatly  
11 disturbed and distressed them, Jay and Debbie refused to cave in to Lapides's extortion  
12 demands.

13 110. On July 30, 2004, Hinds and Lapides spoke with J. Scott Bovitz, the attorney  
14 for Randy Johnson. Hinds stated he was going to speak with Reeder, the Debtors's  
15 attorney, and demand the sum of \$1,200,000 for the Bankruptcy Estate, and threatened  
16 that unless the demand was accepted Gonzalez would file a complaint to revoke the  
17 Debtors's discharge, make a referral against Jay Johnson under Title 18 of the United  
18 States Code for hiding assets of the Bankruptcy Estate and making false statements on the  
19 Bankruptcy Schedules, and would report Jay to the IRS for tax fraud and get a finder's fee  
20 of ten percent.

21 111. In a letter to Reeder and Bovitz dated October 22, 2004, Lapides stated he  
22 had received "a copy of a Settlement Offer dated Aug. 12, 2004 prepared by the trustee's  
23 attorney. ... In this Settlement Offer, the trustee's attorney stated that if the terms were  
24 agreed to that this could avoid the requested referral of these matters to the Office of the  
25 United States Trustee and then to the U.S. Attorney, and that no contact would be made  
26 with the Internal Revenue Service regarding the apparent conduct of Jay and Debra  
27 Johnson." The settlement offer was rejected and on September 22, 2004, Gonzalez II was  
28 filed.

1                   **2. Misrepresentations**

2                   **a. Misrepresentation re: discovery cutoff**

3           112. On May 31, 2006, present counsel substituted in as counsel for Jay and  
4 Debbie Johnson in Gonzalez II. On June 14, 2006, counsel telephoned Hinds to introduce  
5 himself. During this conversation with Hinds and Shankman, in response to counsel's  
6 inquiry regarding further discovery they each responded that the discovery cutoff date was  
7 May 30, 2006, and there could be no further discovery. In a follow-up letter from Hinds  
8 dated June 16, 2006, Hinds reaffirmed that "Discovery is closed ...". A few days later, on  
9 June 21, 2006, Hinds also told Randy Johnson the discovery cutoff date had passed and  
10 no further discovery could take place. Hinds obviously was trying to take advantage of  
11 new counsel not having the files in hopes he could deter counsel from conducting further  
12 discovery.

13           113. When new counsel received the complete file from prior counsel he learned  
14 that Hinds had misrepresented the discovery cutoff date. The date was not May 30, but  
15 was July 31, 2006. Counsel then noticed several depositions, including the deposition of  
16 Randy Johnson. On July 18, 2006, Hinds wrote counsel, asserting spurious reasons why  
17 counsel could not take Randy Johnson's deposition and threatened to seek sanctions  
18 against him if he proceeded. Threatening sanctions became a common tactic on Hinds's  
19 part throughout the litigation. On July 20, 2006, counsel wrote back to Hinds, first  
20 rebuking him for attempting to mislead counsel as to the discovery cutoff date, and then  
21 explaining why it was proper to take the deposition of Randy Johnson. There was a further  
22 exchange of letters the following day, July 21, 2006, in which Hinds did not deny telling  
23 counsel the discovery cutoff was May 30<sup>th</sup>, but retorted by saying counsel suffered a "self  
24 inflicted wound" (sic) by not reviewing the files.

25                   **b. Misrepresentation re: temporary restraining order**

26           114. On June 16, 2006, Gonzalez filed a complaint against Randy and Robin  
27 Johnson ("Gonzalez III"), alleging the existence and breach of a settlement agreement  
28

1 between Gonzalez and Randy and Robin Johnson. Randy and Robin brought a motion for  
2 summary judgment which was granted by the court.

3 115. When Hinds filed Gonzalez III, he sought a temporary restraining order and  
4 preliminary injunction against Randy and his former attorney, Bovitz, to prevent Bovitz  
5 from returning \$25,000 to Randy which was then in Bovitz's trust account. Randy was  
6 then *pro per*, and Hinds sought to take advantage of Randy at a time when he did not have  
7 an attorney—Hinds has an entry in his time records for June 12, 2006 reading: "Telephone  
8 call from R. Lapidés re taking advantage of the loss of counsel and options."

9 116. On June 30, 2006, the court granted the temporary restraining order  
10 restraining Randy from taking possession of the \$25,000 held in Bovitz's trust account. In  
11 preparing the proposed Order, Hinds attempted to surreptitiously add language in the  
12 Order that the \$25,000 "represent[ed] a down payment against the agreed to settlement  
13 sum of \$75,000.00 with Rosendo Gonzalez ...." The added language was not true, Randy  
14 objected, and the court struck the false material from the Order.

15 **c. Misrepresentation re: preliminary injunction**

16 117. The hearing on the preliminary injunction was continued by the court to July  
17 25, 2006. On July 19, 2006, Hinds sent Randy an email in which Hinds attempted to  
18 mislead Randy regarding the hearing date: "I just want to confirm that we have no hearing  
19 scheduled for this month and that the hearing originally set by Judge Smith for 7/25 is off  
20 calendar. My notes show that the next hearing is set for 8/31. Is this correct?"

21 118. The hearing on the preliminary injunction had not been taken off calendar.  
22 Randy was not so easily tricked, and emailed Hinds: "that is not my understanding. i  
23 looked at her calendar yesterday and our hearing is on it."

24 **F. Suborning Perjury, Intimidation of Witness, and Bribery**

25 119. At an early stage of the proceedings Randy Johnson asserted his Fifth  
26 Amendment right not to testify as to certain matters. New counsel scheduled his deposition  
27 for July 27, 2006, and it was known beforehand that Randy intended to answer every  
28 question he previously refused to answer.

1           120. It was obvious Randy's testimony was going to hurt Gonzalez's case against  
2 Jay, and, so, on July 21, 2006, just a few days before Randy's deposition, Hinds sent Randy  
3 an offer of settlement, one of the conditions of which was that "the Trustee demands that  
4 you stand by your assertion of the 5<sup>th</sup> Amended (sic) at any future deposition or trial." That  
5 Hinds was looking to find ways to suborn perjury from Randy or to intimidate Randy into  
6 testifying against Jay and Debbie is clear from Shankman's entry in the firm's billing for  
7 June 5, 2006 referencing his and Hinds's conference to "discuss potential wedge issues to  
8 bring R. Johnson to the table against J. and D. Johnson." When Randy replied that he  
9 would not accept the offer, Hinds emailed Randy: "As far as we are all concerned on our  
10 side we are going to litigate the Hell out of this matter and the related matters with Jay  
11 next week and for the weeks to come." Hinds, again, made good on his promise.

12           **G. Mediation and the Motion to Compel Settlement**

13               **1. The mediation**

14           121. To resolve matters, the parties engaged in a voluntary private mediation with  
15 Bankruptcy Judge Mitchel Goldberg as mediator. The Johnsons refused to settle for  
16 anything substantial until in the late hours of the evening of the second day Judge Goldberg  
17 pressured the Johnsons by repeating the threats made by Gonzalez, Hinds, and Lapidès  
18 that if the Johnsons lost in court, Gonzalez would turn the matter over to the authorities  
19 and the Johnsons would be prosecuted and sent to jail. At that point, Debbie broke down  
20 crying, Jay relented, and a settlement was supposedly reached.

21               **2. The preparation of the settlement agreement and the**  
22               **misrepresentations as to what was agreed**

23           122. In the months that followed, utilizing the seventy-seven-page transcript of  
24 Judge Goldberg's recitation of the alleged settlement, Shankman prepared an extensive  
25 written agreement supposedly reflecting the terms and conditions of the settlement. With  
26 the advice of new counsel, the Johnsons believed the settlement was not binding or  
27 enforceable because of Lapidès's duplicity during the mediation regarding the water issues  
28 and the undue coercion by threats of possible criminal prosecution, and because the

1 proposed agreement did not in fact reflect what was agreed to at the mediation and  
2 therefore there was no meeting of the minds on an agreement. Counsel also advised that  
3 the mediation discussions were privileged and could not be used to prove the existence of  
4 a settlement or the terms of a settlement.

5 123. When the Johnsons did not participate in drafting the settlement agreement,  
6 Gonzalez and Hinds arranged for a further mediation session with Judge Goldberg for June  
7 9, 2006. The Johnsons, however, refused to attend the session or to continue with the  
8 mediation, and were now determined to try the case and prove their innocence and show  
9 that Lapides maliciously concocted his story about fraud to extort money from them.

10 124. Notwithstanding the refusal of the Johnsons to participate further in the  
11 mediation, Gonzalez, Hinds, and Lapides met with Judge Goldberg, and Shankman  
12 rewrote the settlement agreement, making significant revisions and adding terms and  
13 conditions decided upon at the June 9 meeting. Inexplicably, Judge Goldberg signed the  
14 following statement at the end of the agreement: "The Settlement Judge herein approves  
15 this document as reasonably reflecting the Settlement of the Parties recited in open Court,  
16 the Official Transcript of which is attached hereto as Exhibit (sic) '1' [the September 2005  
17 seventy-seven-page transcript of Judge Goldberg's recitation of the alleged settlement]  
18 and which is incorporated herein as if set forth in full." Many of the provisions in the  
19 written settlement agreement were matters never discussed at the mediation attended by  
20 the Johnsons in September 2005, including provisions regarding Lapides's self-contained  
21 water-delivery system. It was a matter of serious concern that Gonzalez represented to the  
22 court that the Debtors's consent to the provisions in the written agreement regarding  
23 Lapides's undisclosed water system and numerous other matters were to be found in the  
24 transcript of the oral agreement—that simply was not true. The Johnsons refused to sign  
25 the agreement, and because the agreement was not signed and was not on the record before  
26 a judge with adjudicatory authority, it was clearly unenforceable.

1                   **3. The motion to compel settlement**

2           125. When the Johnsons refused to sign the settlement agreement, Gonzalez and  
3 Hinds brought a motion to compel enforcement of the agreement, and on November 21,  
4 2006, Bankruptcy Judge Erithe Smith granted the motion, but did not sign the order  
5 enforcing the agreement until April 12, 2007. The Johnsons immediately thereafter  
6 brought a motion for reconsideration, and on September 24, 2007, Judge Smith granted  
7 the motion for reconsideration and reversed her prior order, declaring the settlement  
8 agreement null and void. The enormous amount of time and effort and expense in opposing  
9 the motion to enforce the settlement and in persuading the court an error had been made  
10 in granting the motion was a travesty—the law on this matter was crystal clear and the  
11 motion to compel had to have been brought in bad faith.

12           126. Perhaps the most disturbing part of the mediation process and the motion to  
13 compel was that Gonzalez and Hinds attached to the motion the entire seventy-seven-page  
14 transcript of the alleged agreement reached in the early hours of the morning of September  
15 22, 2005. To add further to the violation of the law and ethics regarding mediation,  
16 Gonzalez and Hinds also attached to the motion the eighty-page transcript of the so-called  
17 mediation session held June 9, 2006, out of which came additional terms and conditions  
18 to the supposed settlement agreement. Although the Johnsons vigorously objected and  
19 warned Judge Smith she should not read the transcripts, the objection went unheeded and  
20 Judge Smith read the forbidden mediation transcripts. Counsel wrote Hinds and cited the  
21 law regarding the confidentiality of the mediation proceedings and in the strongest of  
22 terms objected to his use of the transcripts of the proceedings to dissuade him from filing  
23 his motion, but to no avail. Counsel's objection was met with a threat that if the Johnsons  
24 did not sign the agreement Gonzalez would bring a motion for sanctions for his having to  
25 move to compel compliance. The motion for sanctions was brought and denied.

26           127. Clearly, the Defendants intended to prejudice Judge Smith against the  
27 Plaintiffs by showing their supposed agreement to pay a substantial amount in settlement,  
28 for no lawyer could believe in good faith that the mediation proceedings could be used to

1 prove a settlement. On the motion for reconsideration, Hinds was reduced to arguing inane  
2 propositions to support his giving the mediation transcripts to the court, including that the  
3 parties “invested Judge Goldberg with extraordinary powers to complete the agreement,”  
4 “invested Judge Goldberg with additional powers as a Judge to complete the settlement,”  
5 and “deputized” him with judicial authority to find and declare the terms and conditions  
6 of the settlement and granting him authority to arbitrate any disputes that remained or  
7 might arise in the future and authority to enforce the provisions of the settlement. It did  
8 not help that Judge Goldberg referred to himself as “the court” and the “final” and “sole  
9 arbiter” of issues and that there was a settlement “on the record” “in open court” (at  
10 midnight) and that he “reserved jurisdiction” over settlement terms and he would enforce  
11 the provisions of the settlement and sign the agreement for any party that refused to sign.

12 128. Another disturbing part of the motion to compel is that Judge Goldberg  
13 apparently communicated directly with Judge Smith regarding the supposed settlement  
14 prior to the hearing on the motion. Hinds has an entry in his billings for August 10, 2006,  
15 which reads: “Confer with [Shankman] re ... the e-mail from Judge Goldberg re his review  
16 of the Settlement Agreement *and communication direct to Judge Smith re same ....*” A few  
17 weeks later on September 22, 2006, Hinds has another entry on his billing statement  
18 reading: “Telephone call from Judge Goldberg re getting the settlement approved by Judge  
19 Smith. E-mail [Shankman] re Judge Goldberg’s call tonight....” The propriety of Judge  
20 Goldberg communicating directly with Judge Smith regarding “getting the settlement  
21 approved” is more than questionable, and it appears Hinds in effect had an *ex parte*  
22 communication with Judge Smith through Judge Goldberg.

23 **H. The Threat of Criminal Proceedings and the Statement to Suppress or**  
24 **Destroy Evidence of Criminal Activity**

25 129. On more than one occasion, Hinds threatened to “report” the Johnsons to the  
26 criminal authorities based on the “evidence” Gonzalez had gathered. In addition, Hinds  
27 openly stated that if the Johnsons would simply go along with the alleged settlement  
28 agreement (mentioned above and which was later found not to be enforceable), the

1 “evidence” of the supposed crimes would be destroyed. For example, on March 4, 2007,  
2 Hinds wrote counsel:

3           Assuming that Randy’s defense is being funded by others ... the  
4 question still remains why would anyone continue to pay for the defense in  
5 our cases if there is literally no upside potential in the defense (other than  
6 perhaps avoid jail time on tax and Title 18 issues)? If the only thing we are  
7 fighting over is to keep Randy and Jay (and their family members) out of a  
8 federal facility due to what appear to be violations of Titles 18 and 26, there  
9 is a much more cost efficient way to make sure that all of the evidence  
10 developed by the Trustee to date (which is, in our opinion, substantial) is  
11 destroyed and that none of these documents are turned over to the federal  
12 prosecutors or investigators. I believe it when you said to Richard and Janis  
13 Lapides at your Rule 26 meeting last year that your primary motivation was  
14 “to keep your clients out of jail.”<sup>1</sup> The Trustee sees little value in having the  
15 Johnsons charged with any criminal violations resulting from the  
16 investigation conducted to date and the facts uncovered. The Johnsons  
17 cannot fulfill their obligations under the settlement brokered by Judge  
18 Goldberg if they cannot work or the IRS and FTB assert priority liens.

19 ...

20           Given what we see as significantly diminished returns to the Johnsons  
21 and the Trustee based on ... the potential criminal fallout from the Trustee  
22 establishing his claims, ... the Trustee’s duty to report improper conduct to  
23 the Department of Justice and the U.S. Trustee’s Office ....

---

24  
25  
26 <sup>1</sup> That was not true. Hinds was not at the Rule 26(f) meeting, thus Lapides must have  
27 told Hinds that counsel’s “primary motivation was ‘to keep [my] clients out of jail.’”  
28 Counsel never made any such statement. The Johnsons adamantly maintained that they  
were innocent of any alleged crimes. They steadfastly refused to compromise with  
Gonzalez or Lapides and have now proved the claims asserted were false.

1           130. The statements in Hinds's letter of March 4, 2007, were foreshadowed in  
2 earlier letters and court filings. For example, in Hinds's letter dated October 17, 2006, just  
3 prior to the hearing on the motion to enforce the alleged settlement agreement, he stated:  
4 "I would not be surprised if there are several governmental agencies taking a close look at  
5 the conduct of the debtors and the evidence developed by the Trustee over the past several  
6 years to determine if violations of Titles 18 and 11 occurred in this case."

7           **I. Discovery, and the Defendants's Failed Attempt to Exclude Documents**  
8           **from Evidence**

9           131. Throughout the litigation, the Defendants accused the Plaintiffs of failing to  
10 cooperate in discovery and of refusing to produce documents. The accusations were false  
11 and made with the intent to deceive the court into believing the Plaintiffs were hiding  
12 evidence. There was never an instance where the Plaintiffs possessed a document that was  
13 requested and they refused to produce it. On the other hand, the Defendants made  
14 numerous attempts to suppress or exclude documents at trial on the sham basis they had  
15 not been produced timely. For one example (there are many more), Gonzalez attempted to  
16 exclude Q Financial's Union Bank monthly statements on three separate occasions, the  
17 last time being at trial where Lapidès falsely testified he had just recently seen the  
18 documents when in fact he had known of their existence for ten years.

19           **1. The production of the documents and their designation as an**  
20           **exhibit for trial and Lapidès's acknowledgement of having the**  
21           **documents and there being no objection to them**

22           132. On May 26, 2004, Hinds sent Randy an email asking "where the Q Financial  
23 bank account information can be located." Randy responded: "you have the Wells Fargo  
24 statements [previously sent to Hinds]. before that, from 1997 to 1999, the bank accounts  
25 were at Union Bank in the Pasadena office. I don't have any records but am trying to  
26 obtain account numbers." The next day, May 27, 2004, Randy sent Hinds an email stating:  
27 "one positive note is that ... the Q union bank account number was on a letter to a mortgage  
28 broker as part of my escrow package, so that ... will be helpful." On May 29, 2004, Randy

1 sent Hinds another email stating: "I will focus now on getting ... bank accounts that I am  
2 currently missing ...." Subsequently, Randy found the original Union Bank statements of  
3 account and on June 7, 2004 sent Hinds an email stating: "I have more information to send  
4 you regarding transactions through Q in 2000. I will be putting this together with my other  
5 answers to questions." The bank statements were sent to Hinds and given to Lapidès.

6 133. On January 30, 2007, the Plaintiffs filed an Exhibit List for an earlier trial  
7 which identified the Q Financial Union Bank monthly statements as an exhibit. Counsel  
8 for the Plaintiffs delivered copies of all the exhibits to Hinds. On March 20, 2007, Hinds  
9 filed his motion *in limine* to exclude documents allegedly produced "well after the  
10 discovery cut off date," and in his declaration in support of the motion declared the  
11 documents produced by counsel for the Plaintiffs contained "a number of new, never  
12 before disclosed documents" and that he delivered the documents to Lapidès for his  
13 review.

14 134. In his declaration in support of the motion *in limine*, Lapidès testified he had  
15 previously reviewed every document produced by the Plaintiffs and compared them with  
16 the proposed exhibits produced by counsel for the Plaintiffs and listed on their Exhibit  
17 List. Lapidès then stated that the Union Bank monthly statements had previously been  
18 produced by the Plaintiffs and he had "no objection to their inclusion in the trial of this  
19 matter," identifying the bank statements as documents in their files.

20 **2. The first devious attempt to exclude the documents**

21 135. In August 2010, counsel for the Plaintiffs gave Hinds a proposed Joint  
22 Pretrial Statement which identified the Union Bank monthly statements as an exhibit, and  
23 Hinds filed a motion *in limine* to exclude the statements. In his declaration in support of  
24 the motion Hinds declared the statements had "never before [been] disclosed."

25 136. On January 4, 2011, counsel for the Plaintiffs filed his declaration in  
26 opposition to the motion, attaching a chart prepared jointly with Hinds in which Hinds  
27 confessed, again, that the documents "were in the Trustee's files before the Discovery Cut-  
28 off Date; therefore there is no objection as to its timeliness." On June 15, 2011, the court

1 signed its Order regarding the motion *in limine*, in which the court did not include in the  
2 exhibits that could not be used the Union Bank monthly statements of account, meaning  
3 the documents could be used at trial.

4 **3. The second devious attempt to exclude the documents**

5 137. In preparation for the trial in 2014, counsel for the Plaintiffs sent Hinds a  
6 draft of the Plaintiffs's Exhibit List which identified the Union Bank monthly statements  
7 as an exhibit. Hinds again objected to the statements on the grounds that "[t]he purported  
8 original of this document was not produced by the [Plaintiffs] prior to the discovery cutoff  
9 date in the cause." Counsel for the Plaintiffs expressed his ire to Christina Keith, counsel  
10 assisting Hinds, and stressed he would not tolerate the assertion of this objection again and  
11 the matter would be brought to the attention of the court. Apparently, Keith prevailed upon  
12 Hinds because the objection was withdrawn and was omitted in the Revised Joint List of  
13 Exhibits submitted to the court for trial.

14 **4. The third devious attempt to exclude the documents and Hinds's**  
15 **false statements**

16 138. Counsel for the Plaintiffs was absolutely stunned at trial when Hinds  
17 objected to the Union Bank monthly statements on the ground they had not been produced  
18 timely and they had only recently been received. Counsel for the Plaintiffs pointed out that  
19 the objection was not listed in the Joint List of Trial Exhibits and Hinds made the statement  
20 that to get the Joint List filed he "dumbed down" the objections by leaving this objection  
21 out, but still insisted the objection stood. The court overruled the objection. Given the  
22 history of this issue the objection had to have been made in bad faith—Hinds could not  
23 possibly have forgotten the past battles; in fact, Hinds falsely represented to the court that  
24 the Plaintiffs had lost every single battle on this issue.

25 **5. Lapidès adds his false testimony at trial**

26 139. During the argument at trial regarding this matter, Hinds made the false  
27 statement that the document was an "outlier," and in referring to Lapidès's testimony  
28 which had just been given at that point in the trial falsely stated that Lapidès had not seen

1 the document and therefore did not list it in his Report and counsel for the Plaintiffs should  
2 realize Lapidès cannot testify regarding the document because he had not seen it. Taking  
3 his cue from Hinds, when Lapidès was asked when he first saw the bank statements he  
4 falsely testified: "I don't recall ever having seen this before;" he then modified that  
5 somewhat by saying he may have seen the statements when the Joint Exhibit list was  
6 prepared for the current trial. And asked one last time, Lapidès testified he had not seen  
7 the bank statements until just before trial, and knew nothing about the account. The next  
8 day Lapidès again testified falsely that this account had only recently been discovered.  
9 Lapidès testified he knew there was at least one other account (the Union Bank account)  
10 that was not disclosed to the trustee. Lapidès's testimony was patently false and clearly  
11 given with the intent to mislead the court.

12 **J. Gonzalez's False Testimony at Trial**

13 140. There were several instances where Gonzalez testified falsely at trial. One  
14 instance regarding mortgage interest payments is noteworthy.

15 141. In his trial declaration under the heading "Documents Which The Debtors  
16 Failed To Provide To Me At The Inception Of This Chapter 7 Case," Gonzalez stated that  
17 "[t]he Debtors did **not** provide me with any information ... that the Debtors were (and had  
18 been) taking the owners' mortgage interest deduction on the mortgage payments on the  
19 Viro Road Property" (emphasis in original). Gonzalez testified at trial he determined the  
20 Debtors had been taking the mortgage interest deduction on the Viro Road Property. When  
21 asked on cross-examination what evidence he had the Debtors had taken the mortgage  
22 interest deduction during the time Randy owned the property, Gonzalez testified he  
23 believed it was one or more tax returns provided by the Debtors. But that could not  
24 possibly be true. The Debtors never took the mortgage interest deduction until after the  
25 property was sold to Michael McFall in October 2001, months after the filing of the  
26 bankruptcy. The Debtors's tax returns for 1996, 1997, 1998, 1999, 2000, and 2001, all  
27 show the Debtors did not take the mortgage interest deduction. The Debtors's tax return  
28 for 2002, after the sale of the property to McFall, is the only tax return showing the Debtors

1 taking the mortgage interest deduction, and that return is dated August 14, 2003. When  
2 confronted with these facts, Gonzalez backpedaled and said if it was not a tax return, it  
3 must have been something else—but there is nothing else that anyone has pointed to, nor  
4 could they since the Debtors never took the mortgage interest deduction during the time  
5 in question.

6 **K. The Viro Road Property**

7 142. The Defendants contended the Debtors acquired the property at 4600 Viro  
8 Road (“Viro Road Property”) in La Cañada as an asset and thereafter fraudulently  
9 transferred the property to Randy and Robin Johnson. This contention, as with all the  
10 Defendants’s contentions in this case, rested entirely upon Lapidés’s so called expert  
11 reports and trial testimony. The evidence, however, made it crystal clear the Defendants  
12 had a predetermined conclusion regarding the issue and misstated, twisted, and fabricated  
13 facts to support the conclusion. There was no evidence to support the Defendants’s  
14 position. The evidence proved just the opposite, *i.e.*, the Debtors were not the owners of  
15 the Viro Road Property. The evidence at trial and which was known to the Defendants  
16 before filing suit, was as follows:

17 **1. Jay Johnson finds the Viro Road Property and Randy Johnson**  
18 **agrees to buy the property and rent it to the Debtors**

19 143. In early 1995, Jay and Debbie Johnson were told they would have to vacate  
20 the home they were renting on Gould Avenue. Jay found a home for sale at 4600 Viro  
21 Road he believed could be remodeled and would be a nice home for him and his family if  
22 in time they could acquire it. Jay and Debbie had little money and with the Lapidés  
23 Judgment against them they had no credit to buy the house. Randy and Robin were renting,  
24 and Jay asked Randy if he would like to buy the house as his residence and sell it to Jay  
25 and Debbie at full market value if they were later able to afford it and Randy did not want  
26 to live in the house. It was agreed that if Randy decided to sell the house to Jay and Debbie,  
27 any appreciation in the value of the property would be Randy’s and not Jay’s, but that Jay  
28

1 and Debbie could pretty much design and landscape the house as they liked since it was  
2 hoped they would eventually be able to buy the house.

3 144. Jay explained the relationship between him and his brother Randy, testifying  
4 that he and Randy had been taught by their parents that if one of them needed help, and  
5 the other was able to give that help, they should gladly lend a helping hand. Over the years,  
6 Jay and Randy had always been there for the other in times of need. For example, Jay told  
7 of how Randy could not afford a car in college and so he gave him a car. At school, Randy  
8 was not focused on any path to graduation and Jay mentored him to a point where he  
9 graduated and went on to UCLA for his Masters Degree. Later Jay helped Randy find a  
10 home to buy on Castle Road which Randy later sold and earned a profit of approximately  
11 \$150,000. Now that Jay and Debbie could not stay in the house on Gould Avenue, they  
12 needed help in getting their family settled in another home, and Randy gladly agreed to  
13 help because he was able to do so.

14 **2. Randy and Robin buy the Viro Road Property and Jay and**  
15 **Debbie rent it from the seller pending the close of escrow**

16 145. It was financially impossible for Jay and Debbie to buy the Viro Road  
17 Property; but it was possible for them to rent the property. On the other hand, it was  
18 relatively easy for Randy and Robin to buy the property and they were more than willing  
19 to rent it to Jay and Debbie.

20 **a. Jay and Debbie's financial standing in June 1995**

21 146. An obviously important factor in determining whether Jay and Debbie  
22 bought the Viro Road Property was whether Jay and Debbie had the financial capacity to  
23 buy the property.

24 **(1) Jay and Debbie had no assets**

25 147. Lapedes conceded that whether Jay and Debbie had any assets at the time the  
26 Viro Road Property was purchased was a factor to be considered. It was then shown that  
27 Jay and Debbie had no assets.

28

1           148. Jay testified that while he had been successful as an architect, and for the  
2 most part had been able to earn a good living, he and Debbie had never been affluent, and  
3 circumstances were such they were never able to accumulate much wealth. The evidence  
4 showed the following: Jay was broke when he finished college. He and Debbie married  
5 shortly thereafter and started a family. They put \$30,000 of savings into buying the Oliver  
6 Property and lost \$55,000 on the sale of the property to Lapidès. In late 1990 they sold  
7 their house on Greenridge Drive for less than the amount owed on the mortgage and rented  
8 for the next five years. Earlier they had put \$50,000 down to buy the La Forest  
9 Drive/Johnson Property, invested another \$100,000 over the next few years in developing  
10 the property, and in early 1996 lost the property in a foreclosure. In May 1994, Lapidès  
11 recorded a judgment against Jay and Debbie for almost \$384,000, and in June, Jay and  
12 Debbie signed a note for \$400,000 in favor of Lapidès.

13           149. Lapidès admitted he had no evidence of any assets Jay and Debbie owned in  
14 June 1995: no real property other than the La Forest Drive Property which had no equity  
15 and was shortly thereafter lost in foreclosure; no stocks, bonds, or mutual funds; no  
16 precious metals, jewelry, paintings, objects of art, antiques, or collectables; no  
17 automobiles; and no cash or pension funds. In the end, Lapidès admitted he did not know  
18 if in June 1995, Jay and Debbie had any significant assets.

19           150. Lapidès executed (wrongfully) on his judgment against Jay and Debbie's  
20 personal accounts and against JJ-AIA's account but got nothing and could find no other  
21 assets to levy against. It was so obvious Jay and Debbie had no assets in June 1995, that  
22 in his Reports Lapidès did not even discuss the issue whether the Johnsons had any assets  
23 as of June 1995. Nor did Lapidès discuss or even mention whether Randy and Robin had  
24 assets at the time.

25                           **(2) Jay and Debbie had no credit**

26           151. Lapidès conceded his judgment against Jay and Debbie Johnson alone would  
27 have adversely affected their credit worthiness and that with no credit it would have been  
28 virtually impossible for Jay and Debbie to buy the Viro Road Property. Lapidès said he

1 did not know whether any of the Johnsons were creditworthy and did not consider the  
2 issue, and he ignored the issue in his Reports.

3 **b. Randy and Robin's financial standing in June 1995**

4 152. Randy Johnson obtained his MBA from UCLA in 1983. From 1983 to 1986  
5 he was employed by Kidder, Peabody & Company in Los Angeles and New York as a  
6 Fixed Income/Financial Futures Specialist. From 1986 to 1989 he was employed by  
7 American Savings Bank in Irvine, California, becoming Executive Vice President, Chief  
8 Investment Officer, and Head of Trading. From 1989 to 1993, he was employed by  
9 LOR/Geske Bock Associates in Los Angeles as Vice President and Manager, Financial  
10 Institutions Division. And from 1993 to 1997, he was employed by Fidelity Federal Bank,  
11 FSB ("FFB"), in Glendale, California, holding the positions of Treasurer, Chief  
12 Investment Officer, Head Trader, Asset/Liability Manager, Structured Finance Manager,  
13 Secondary Market Manager, and Interest Rate Risk/Hedging Manager. Randy was a  
14 highly-compensated bank officer; there was no evidence to the contrary, and Lapides  
15 ignored Randy's financial status in his Reports.

16 **c. Randy and Robin sign the purchase agreement**

17 153. Lapides agreed that knowing who signed the purchase agreement would be  
18 an important factor in determining who bought the Viro Road Property. That was so  
19 because the person signing the contract would be the person obligated to perform and  
20 would be the person held liable or responsible for breach of the contract. The Real Estate  
21 Purchase Contract and Receipt for Deposit for the Viro Road Property was signed by  
22 Randy and Robin, obligating them to perform pursuant to the terms and conditions of the  
23 Contract and in the event of their breach making them liable for the broker's commission,  
24 loss of their deposit up to three percent of the purchase price as liquidated damages (almost  
25 \$10,000), and attorney's fees and costs. Randy and Robin were also obligated to (1) act  
26 diligently and in good faith to obtain a loan, (2) make a \$10,000 deposit and an additional  
27 \$22,500 down payment, (3) obtain a \$292,500 first loan, (4) pay a total purchase price of  
28 \$325,000, and (5) obtain a prequalification letter from a lender within ten days. Further,

1 Randy and Robin had to close escrow within 90 days and were liable for one-half the  
2 escrow fees. Jay and Debbie did not sign the Contract, undertook none of the obligations  
3 in the Contract, and could not be held liable for breach of the Contract. Lapidès testified  
4 he took none of these items into consideration in rendering his opinion and none of them  
5 were discussed in his Reports—for obvious reasons.

6 **d. Randy and Robin pay the \$10,000 cash deposit**

7 154. The Escrow Closing Statement shows a cash deposit of \$10,000. Lapidès  
8 agreed that knowing who made the deposit would be an important factor in determining  
9 who bought the property. Lapidès further agreed that the Purchase Contract and Receipt  
10 for Deposit recites that Randy and Robin made the \$10,000 cash deposit by personal  
11 check. The Johnsons all testified Randy and Robin made the deposit and Lapidès admitted  
12 he had seen the check written by Robin Johnson to make the deposit and there was no  
13 evidence the money used to pay the check came from Jay or Debbie Johnson.

14 **e. Randy and Robin's offer was a back-up offer**

15 155. The Purchase Contract, dated June 23, 1995, provides that the \$10,000 check  
16 is to be held uncashed until “the next business day after acceptance of the offer, or upon  
17 written cancellation of escrow #6630-2.” The Contract of Purchase is a printed form which  
18 provides for the cancellation of a prior sale and a back-up offer, and identifies the current  
19 offer as the back-up offer for the Viro Road Property. The only evidence regarding the first  
20 offer was Jay's testimony that “Randy's offer was a back-up offer,” and the offer “was not  
21 an offer from Debbie or me—we never made an offer to buy the property.”

22 **f. Mitchell accepts Randy and Robin's offer and Jay and**  
23 **Debbie rent the house pending the close of escrow**

24 156. Randy and Robin signed the Contract of Purchase on June 23, 1995, and  
25 Mitchell accepted the offer on June 27, 1995. Jay testified that “[a]fter Mitchell accepted  
26 Randy's offer to purchase the property, he accepted our offer to lease the property.” The  
27 Lease agreement between Jay and Debbie and Mitchell provided for rent of \$1600 per  
28 month.

1 **g. Randy and Robin pay the additional \$55,250 deposit**

2 157. The closing statement shows an additional deposit of \$55,250. Again,  
3 Lapidès admitted that knowing who made the deposit would be an important factor in  
4 determining who bought the Viro Road Property. Lapidès testified he did not know who  
5 wrote the check for the \$55,250 deposited into escrow, and did not know from which bank  
6 account the balance of the funds came from. Randy testified that he and Robin deposited  
7 an additional \$55,250 into escrow, and that none of the money came from Jay or Debbie.  
8 Jay and Debbie both testified that Randy and Robin deposited the \$55,250 into escrow,  
9 and that none of the money came from them.

10 **h. Lapidès's incompetence as an expert on the Viro Road**  
11 **Property transaction**

12 158. Nowhere is Lapidès's incompetence as an expert demonstrated more clearly  
13 than with respect to his opinion regarding the import of the \$10,000 cash deposit for the  
14 purchase of the Viro Road Property. In his Report Lapidès declares that if Jay was renting  
15 and not buying the property the \$10,000 cash deposit in escrow would be shown on the  
16 closing statement as a credit to the buyer. The escrow closing statement shows the \$10,000  
17 deposit credited to the buyer. Lapidès's Report also accurately reflects that fact: "The  
18 Closing Statement confirmed that \$10,000 was indeed deposited into escrow, and this  
19 \$10,000 was credited to the 'Buyer' towards the \$325,000 Sales Price." Thus, according  
20 to Lapidès's hypothesis, because the \$10,000 deposit was credited to the buyer, Jay was  
21 renting the property. Notwithstanding the inescapable conclusion applying his hypothesis,  
22 Lapidès concluded just the opposite: "This discussion pretty well establishes that the  
23 debtor himself paid at least this \$10,000 towards the down payment of the Viro property!"

24 159. Lapidès's reasoning is incomprehensible. There is no connection between  
25 the deposit being credited to the buyer and Jay's renting the house. Nor can it be explained  
26 by saying Lapidès made an error and he really meant the seller, as opposed to the buyer,  
27 would be credited with the \$10,000 deposit if Jay were renting the property. That can easily  
28 be demonstrated: The totals at the bottom of the closing statement must match, as they do

1 in this case, each reflecting the sum of \$627,750. If the \$10,000 deposit is moved to the  
2 opposite column, the closing statement would reflect \$237,750 debited to Randy and  
3 \$617,750 credited to Randy and the closing statement would be \$20,000 out of balance.  
4 None of this mattered to Lapidès as he concluded: “Even if we had no other evidence, just  
5 these facts alone indicate that the debtor had at least an ‘undisclosed equity position’ in  
6 the 4600 Viro Road property.” No reasonable trustee in bankruptcy or attorney could  
7 possibly rely upon this kind of testimony as proof of fraud.

8 **3. Randy retains JJ-AIA for architectural work**

9 **a. The contract for architectural work**

10 160. On August 12, 1995, Randy and Robin retained JJ-AIA to do the architectural  
11 work on the Viro Road Property, and paid a retainer fee of \$2,000. An invoice from JJ-  
12 AIA to Randy and Robin dated November 16, 1995, shows an amount paid to date of  
13 \$19,000, with a balance owing of \$2,000.

14 **b. The plan checking fee**

15 161. In his Report, Lapidès referred to an Application for Building Permit and  
16 stated that a “Building Permit fee of \$1,941.43 was paid by check #1642 by the city from  
17 the debtor *Jay Johnson* on 10-11-95” (emphasis in original). Although Lapidès contended  
18 he was an expert in reading this type of document, his expertise failed him—the \$1,941.43  
19 was not for the Permit Fee but was for the Plan Checking (“P.C.”) fee, and he did not know  
20 what the initials “P.C.” meant. The Application identifies Randy as the owner of the  
21 property and Jay as the architect or engineer. The Application further reflects that the check  
22 for the Plan Checking fee was received October 11, 1995, that on October 17, 1995, the  
23 architect requested the county “hold off p.c. [plan checking]”, that the “go ahead w/p.c.”  
24 was given December 27, 1995, and approved January 19, 1996.

25 162. Neither the Application nor the Fee Receipt for the payment of the plan  
26 checking fee shows whose check was given for the fee. Lapidès admitted he had not seen  
27 the check and did not know who issued the check, and did not even know if it was Jay that  
28 presented the check. Lapidès also admitted he was not an architect and had no knowledge

1 of how architects run their business or whether architects advance money for the payment  
2 of fees such as for plan checking fees. Jay testified that he often advanced costs for his  
3 clients, such as plan check fees, and would certainly have done so for his brother.

4 **4. Randy obtains a construction loan**

5 163. The Purchase Contract required the buyers, Randy and Robin, to obtain a  
6 loan in the amount of \$292,500. Lapides admitted that knowing who signed the note would  
7 be an important factor in determining who purchased the property.

8 **a. Preliminary steps to obtaining the loan**

9 164. Randy negotiated a construction loan from Keros-Mozilo Mortgage Bankers  
10 (the "Keros-Mozilo Loan"), and on December 7, 1995, Keros-Mozilo sent instructions to  
11 Inter Valley Escrow that it wanted a note, deed of trust, and an ALTA Policy showing the  
12 property vested in Randy and Robin, husband and wife, as joint tenants. A Supplemental  
13 Sheet to Escrow Instructions required the borrowers, Randy and Robin, to provide Inter  
14 Valley Escrow with a cashier's check for the balance of the borrower's funds in the amount  
15 of \$52,235, and the escrow Closing Statement shows a cash deposit of \$52,250. As pointed  
16 out above, Randy testified he made the cash deposit, Jay and Debbie testified they did not  
17 make the deposit, and Lapides agreed there was no evidence that Jay made the deposit.

18 165. Keros-Mozilo also wanted the architect contract and copies of paid receipts  
19 for services. Lapides acknowledged the contract between JJ-AIA and Randy and Robin as  
20 the contract required by Keros-Mozilo, and the JJ-AIA invoice as the paid receipt required  
21 by Keros-Mozilo.

22 166. The Supplemental Sheet to Escrow Instructions also required that a tax lien  
23 be paid. Lapides admitted he had no evidence Jay paid the tax lien.

24 167. The Supplemental Sheet to Escrow Instructions also required a signed  
25 Description of Materials List. Lapides had no idea what that document was and when  
26 shown the HUD Description of Materials form had no idea what that form was. Jay  
27 testified that on November 15, 1995, appropriately as the architect for the project, he  
28 signed the HUD form identifying the materials to be used in the construction and

1 remodeling of the home. Lapidès admitted he was not an expert on contracting or  
2 architectural matters and did not know whether Jay properly or improperly signed the form  
3 as architect.

4 **b. The granting and selling of the loan**

5 168. Randy and Robin signed the note for the construction loan. Lapidès admitted  
6 that Randy and Robin's signing the note was an important factor to consider in determining  
7 who purchased the Viro Road Property. It was Lapidès's firm opinion, though, that Jay  
8 paid the principal and interest payments on the loan. The evidence proved the loan was  
9 paid by Randy (see below). Lapidès further admitted that if Jay refused or was unable to  
10 pay the loan Randy and Robin were at risk they would have to pay the loan.

11 169. The note provided it could be transferred or sold, and it was sold to  
12 Independent National Mortgage Company ("INMC") (hereafter the "INMC Loan"). In his  
13 Report, Lapidès stated Jay "paid all of the ... construction loan payments thereby paying  
14 for the second-story addition". Lapidès testified that from all the evidence he reviewed he  
15 determined Jay paid all the principal and interest payments on the construction loan.  
16 Lapidès did not and could not produce any evidence showing Jay paid the principal and  
17 interest for the simple fact that the loan included an interest reserve out of which the  
18 interest payments were made and, as will be seen below, the principal was paid by a take-  
19 out loan from Downey Savings and Loan (the "Downey Loan"). Again, no reasonable  
20 trustee in bankruptcy or attorney could possibly rely upon anyone with such a lack of  
21 understanding of these types of matters.

22 170. The loan statement dated August 31, 1996, showed the interest reserve was  
23 exhausted and INMC requested payment in the amount of \$4,313.34. On September 11,  
24 1996, Randy wrote INMC requesting an extension of the loan and asked that the matter  
25 be expedited because they were ready for another disbursement.

26 171. On September 19, 1996, Randy wire transferred \$25,000 from Bank of New  
27 York to his account at Fidelity Federal Bank ("FFB"). This account was designated by  
28 Randy as the "Viro Construction Account." Randy's schedule of rent and mortgage

1 payments shows Randy making the interest payments to INMC for the months of  
2 September, October, November, and December 1996, out of the Viro Construction  
3 Account at FFB, and Lapidès agreed the entries for the loan payments indicate Randy was  
4 the person making the loan payments from his FFB checking account.

5 172. On September 26, 1996, Randy and Robin signed a Modification Agreement  
6 with INMC extending the construction loan from September 9, 1996 to November 9, 1996.  
7 The Modification Agreement specifically provided that before the extension would be  
8 granted, Randy and Robin had to pay delinquent interest in the amount of \$4,313.34 and  
9 an extension fee of \$500. Randy's payment schedule shows that on September 20, 1996,  
10 a check issued on the FFB Viro Road Construction Account to pay the two amounts  
11 required.

12 173. On September 30, 1996, INMC sent Randy an interest billing statement for  
13 interest due October 1, 1996, in the amount of \$4,331.78. Randy's schedule of payments  
14 reflects Randy paid the interest with check no. 123 drawn against the FFB Viro  
15 Construction Account dated October 17, 1996. The schedule of payments further reflects  
16 Randy paid interest to INMC in November and December 1996, at which time the  
17 construction loan was paid off with a permanent loan from Downey Savings (see below).

#### 18 **5. Completion of construction**

19 174. In his Report, Lapidès notes Jay signed the Notice of Completion as the  
20 owner or corporate officer of named owner or his agent on October 15, 1996. Lapidès  
21 admitted he did not conclude Jay was the buyer of the property from this document. He  
22 further admitted Jay could be signing the document as the agent for the owner, Randy, and  
23 signed the verification as the manager, and admitted he had no expertise to state whether  
24 such a document could or could not be signed by Jay in those capacities.

#### 25 **6. The Downey Savings Loan**

26 175. Lapidès admitted knowing who applied for the permanent or take-out loan  
27 would be an important factor in determining who purchased the Viro Road Property.  
28 Lapidès knew Randy testified he was the one who negotiated the loan with Downey

1 Savings. Randy testified further he paid the \$300 application fee for the loan, which is  
2 reflected on his schedule of payments.

3 176. The Design Escrow, Inc. Borrower's Closing Statement reflects Downey  
4 Savings was making a loan to Randy in the sum of \$620,000 to be secured by a first deed  
5 of trust on the Viro Road Property. Lapidès admitted it was significant the escrow  
6 statement reflected that Randy was the borrower on the loan.

7 177. The Closing Statement reflects, and Lapidès acknowledged, loan proceeds  
8 in the amount of \$562,500 were used to pay off the principal amount of the INMC Loan,  
9 plus \$9,097.33 in interest and a few dollars for fees and a late charge. The Closing  
10 Statement reflects, and again Lapidès acknowledged, the balance of the loan proceeds in  
11 the amount of \$43,250.49, were to be paid to Randy, and he testified he had no evidence  
12 the loan proceeds did not go to Randy. Lapidès recalled Jay testifying he did not get the  
13 money, and Lapidès admitted he had no evidence any of the money went to Jay. All the  
14 evidence points to Randy paying the principal and interest on the construction loan; there  
15 is no evidence Jay paid anything on the construction loan. All the evidence points to Randy  
16 receiving the balance of the loan proceeds in the amount of \$43,250.49; there is no  
17 evidence any of that money ever went to Jay.

18 **7. Randy pays the mortgage, etc, and Jay pays rent to Randy**

19 178. Jay and Randy's agreement regarding rent on the Viro Road Property was  
20 that Jay would essentially pay Randy his out-of-pocket expenses. In his Report, Lapidès  
21 stated that a review of Randy's schedule of payments "revealed that Jay Johnson actually  
22 reimbursed his brother Randy Johnson for each and every mortgage payment, real estate  
23 tax payment, and insurance premium on the 4600 Viro Rd. property for the entire time the  
24 Viro Road property was in the name of Randal Johnson" (emphasis in original). The  
25 evidence showed Jay actually fell short in his payments, and while it was agreed that Jay  
26 would pay Randy his out-of-pocket expenses, Lapidès's statement was false in at least two  
27 aspects: (1) Lapidès admitted at trial his statement was not correct because the schedule  
28 did not cover the entire time period during which Randy owned the property, and (2)

1 Lapidès admitted he did not have evidence of every payment supposedly made by Jay and  
2 therefore could not show Jay made every mortgage payment (see below).

3 **a. Rent from September 1996 to December 1996**

4 179. Jay and Debbie had moved out of the house shortly after escrow closed in  
5 December 1995 so construction could begin on the remodel. Because Jay was not living  
6 in the house during construction up to September 1996, no rent was paid to Randy and  
7 Lapidès had no evidence to the contrary (although, as pointed out earlier, Lapidès had  
8 stated in his Report that Jay started paying Randy rent in December 1995). With  
9 construction of the remodel almost complete, Jay and Debbie moved back into the house  
10 in September 1996 and began for the first time paying rent approximately equal to Randy's  
11 out-of-pocket expenses.

12 180. Randy kept a running schedule of payments from September 1996 to April  
13 1998. Randy's schedule of payments shows Jay making payments approximately equal to  
14 the construction interest payments for the months of September through December 1996,  
15 at which time the construction loan was paid by Randy. Lapidès agreed that the schedule  
16 of payments kept by Randy was consistent with the agreement between Jay and Randy.

17 **b. Rent from January 1997 to April 1998**

18 181. Lapidès agreed the Downey Savings payments began in March 1997, and  
19 there were no loan payments to Downey Savings for January and February. Because Jay's  
20 arrangement with Randy was to pay Randy his out-of-pocket costs, there being no out-of-  
21 pocket costs for those two months Jay made no payments to Randy.

22 182. The schedule of payments shows the payments made by Randy to Downey  
23 Savings and for taxes and insurance, and the payments made by Jay to Randy from  
24 March 1997 to April 1998. Lapidès agreed the schedule shows Jay was not making  
25 payments directly to Downey Savings, and he further agreed Jay was paying Randy and  
26 Randy was making separate payments to Downey Savings for that period.

1                                    **c.      Rent for 1998-2001**

2            183. Lapidès claimed he could prove Jay made matching payments for every  
3 payment Randy made on the Viro Road Property. Randy's schedule ended with April 1998.  
4 When asked where he had evidence Jay made matching payments for 1998-2001, Lapidès  
5 could produce no evidence.

6                                    **d.      The alleged \$10,000 fraudulent rent check issued by JJ&A**

7            184. A glaring and stunning example of Lapidès's duplicity was his claim and  
8 testimony that Jay Johnson issued a \$10,000 fraudulent check against the JJ&A account  
9 for Jay's rent of the Viro Road Property. Lapidès's multiple lies regarding this transaction  
10 were exposed in cross-examination and left Lapidès with no credibility whatsoever.

11           185. In the Table of Contents to his Report, Lapidès identifies several examples  
12 of alleged bankruptcy fraud committed by the Johnsons. Prominent among them is one  
13 entitled "\$10,000 Fraudulent Rent Check Issued by JJ&A." This transaction was a  
14 notorious item highlighted and repeated in numerous places in Lapidès's Report. For  
15 example, at one place Lapidès states (emphasis in original): "... As previously noted and  
16 discussed, JJ&A issued a check on **12-30-2002** to Randal Johnson for \$10,000 with a  
17 Memo stating: "Viro rent". ... This check just seems to be a very very (sic) poor and  
18 superficial attempt by the debtor and his co-conspirator[s] [Randy Johnson and Michael  
19 McFall] to somehow try to verify that Jay Johnson was renting 4600 Viro Road property  
20 from his brother Randy Johnson."

21           186. Lapidès was asked if he had ever seen either the original or a copy of the  
22 check, and he responded "no." Asked how he knew it was a check drawn on JJ&A's  
23 account for \$10,000 payable to Randy if he had never seen the check, Lapidès referred to  
24 the supposed JJ&A 2002 Financial Reports (not admitted into evidence) that supposedly  
25 identified a check issued December 30, 2002, payable to Randy Johnson in the amount of  
26 \$10,000 with a memo reading "viro rent." Lapidès testified most emphatically he had  
27 checked out numerous transactions recorded in the Financial Reports and there was no  
28 question in his mind, no doubt whatsoever, that there was a \$10,000 check issued by JJ&A

1 payable to Randy Johnson which contained the memo "viro rent." It was pointed out to  
2 Lapides that the entry in the Financial Reports did not contain a check number, but that  
3 did not dissuade him. Lapides recognized the Financial Reports as having been prepared  
4 using Quick Books, which he said he was familiar with, and when asked if the check  
5 number would not also be entered he responded, "sometimes yes, sometimes no;" he did  
6 admit, though, to be complete the check number would also be entered.

7 187. Lapides stated it was not necessary for him to look at the bank statement of  
8 account to see if the check was paid because he had satisfied himself that the Quick Books  
9 record was accurate. He was then asked to look at the bank statement and it was pointed  
10 out to him that there was a \$10,000 wire transfer that day to an entity in Idaho, but nowhere  
11 was there a check paid for \$10,000. When asked to find in the bank statements where the  
12 supposed check for \$10,000 was paid, he was at a complete loss. When asked if it was still  
13 his opinion there was a fraudulent check for \$10,000 issued against the JJ&A account to  
14 Randy with a memo stating "viro rent," Hinds, seeing the obvious problem, tried to come  
15 to Lapides's rescue by objecting that counsel had misrepresented Lapides's testimony and  
16 that Lapides had never called it a check. The effort fell flat on its face when it was again  
17 pointed out that Lapides specifically called it a check numerous times in his Report, and  
18 nobody could have forgotten Lapides called it a check umpteen times in the last few  
19 minutes. When asked again if it was still his opinion that Jay, Randy, and McFall  
20 participated in a fraud by issuing a \$10,000 check against the JJ&A account with a memo  
21 reading "viro rent," he responded without hesitation "yes." This testimony occurred at the  
22 end of trial on Friday, February 28, 2014.

23 188. At the beginning of the second week of trial on Tuesday, April 22, 2014,  
24 Lapides was again referred to the Table of Contents to his Report and the reference to the  
25 alleged fraudulent \$10,000 rent check. He was then directed to a section of his Report  
26 where he listed the check among other checks he said were issued for the benefit of Jay  
27 Johnson, and further directed to that section of his report quoted above. Counsel then asked  
28 Lapides if during the past seven weeks he had found the check, and Lapides responded

1 “no,” and when asked if he looked for the check Lapidès testified he had reviewed the  
2 issue thoroughly and looked for the check but did not find it.

3 189. Counsel asked Lapidès how he knew the check was issued by Jay Johnson if  
4 he had never seen the check, and Lapidès said the check had been issued by JJ&A. When  
5 it was pointed out that in his Report he stated the check had been “issued by Jay Johnson,”  
6 Lapidès said he made an error.

7 190. Lapidès explained he matched 200 to 300 checks listed in the Quick Books  
8 record of checks with checks paid in the bank statements and determined the Quick Books  
9 record was accurate, and because the entry for the \$10,000 check in the Quick Books  
10 record did not have a number he did not look in the bank statements for that check. After  
11 again referring Lapidès to the bank statement showing a \$10,000 wire transfer on  
12 December 30, 2002, Lapidès in effect recanted his testimony that there was a \$10,000  
13 check and said that if he had noticed it earlier he would have characterized it as a wire  
14 transfer for the benefit of Randy Johnson.

15 191. Counsel challenged Lapidès as to when he looked at the bank statement and  
16 discovered the \$10,000 payment was a wire transfer and not a check. Lapidès testified it  
17 was after the first of week of trial he researched the issue and when counsel pointedly said  
18 to him “You did it before the trial, didn’t you,” Lapidès responded “no,” and stated that if  
19 he had seen it earlier he would not have put it in his Report or testified as he did the first  
20 week of trial. Lapidès was then shown his Reply Report prepared October 3, 2007, in  
21 which he identified the \$10,000 transaction as a wire transfer to Randy Johnson for “Viro  
22 rent.” Lapidès then admitted that between the time he wrote his first Report and the time  
23 he wrote his second Report he did discover it was a wire transfer. When confronted with  
24 his testimony at the first week of trial where he testified he was absolutely 100% sure it  
25 was a check, Lapidès said he did not remember calling it a check, but that if he did it was  
26 a mistake. Lapidès’s testimony that he did not remember calling it a check a few weeks  
27 earlier was just another bald-faced lie in a series of bald-faced lies. No reasonable trustee  
28

1 in bankruptcy or attorney would tolerate a witness who obviously could not and would not  
2 testify to the truth.

3 **8. Lapidès's bad faith claims regarding Jay's alleged payments for**  
4 **additional Viro Road Property expenses**

5 **a. Bad faith claims regarding construction expenses**

6 192. To support his predetermined conclusion that Jay and Debbie Johnson were  
7 the real owners of the Viro Road Property, Lapidès compiled a list of items he testified  
8 were paid by Jay for work, services, or goods related to the Viro Road Property, which  
9 totaled \$81,172.19. The first item listed is the contract between JJ-AIA. and Randy  
10 Johnson for the architectural services for the remodel of the home on the Viro Road  
11 Property. The original fee for the architectural services was \$20,000. In his letter to  
12 Downey Savings dated December 16, 1996, Jay indicated the architectural fees were  
13 \$21,000, reflecting an apparent addition of \$1,000, and Lapidès used the \$21,000 figure.  
14 Lapidès then stated that Jay "traded services" in that amount, which was confirmed by Jay.  
15 Because Jay traded the \$21,000 in fees owed for rent on the Viro Road Property, Lapidès  
16 cannot count the \$21,000 in fees as "additional" expenses paid by Jay on the property—  
17 Lapidès could only count the fees if Jay did not trade services and paid the rent, and  
18 Lapidès never proved Jay paid the rent.

19 193. The second item on Lapidès's list is \$13,150 for plants obtained from West  
20 Coast Nursery used in landscaping the Viro Road Property. Lapidès states these goods  
21 were also traded for services rendered by Jay to West Coast Nursery, which Jay also  
22 confirmed. Jay billed the amount of these goods to Randy, and Jay stated Randy gave him  
23 rent credit for this amount. Thus, whether Randy paid Jay for the goods or gave Jay rent  
24 credit for the goods, Lapidès cannot count the goods as "additional" expenses paid by Jay  
25 on the property—Lapidès could only count the goods if Jay was not paid and was not  
26 given rent credit, and Lapidès never proved Randy did not pay Jay or give him rent credit.

27 194. The third item on Lapidès's list is \$20,000 for construction costs incurred  
28 with Paynter Construction and which Lapidès again says was traded with Jay for

1 architectural services. Jay billed the construction costs to Randy. Thus, whether Randy  
2 paid Jay the construction costs or gave Jay rent credit for the costs, Lapidès cannot count  
3 the costs as “additional” expenses paid by Jay on the property—Lapidès could only count  
4 the costs if Jay was not paid and was not given rent credit, and Lapidès never proved  
5 Randy did not pay Jay or give him rent credit.

6 195. For the remaining \$27,022.19 of “additional” costs Lapidès claims were paid  
7 by Jay on the Viro Road Property, Lapidès gathered together several checks payable to  
8 contractors and others and without verifying anything to do with the checks testified they  
9 were for work, services, or goods related to the Viro Road Property. His testimony was  
10 patently dishonest.

11 196. Lapidès testified many of the checks were for construction work on the Viro  
12 Road Property, including checks payable to Paynter Construction, Gopher Construction,  
13 Behr Construction, Uprising Construction, Architectural Lighting and Design, Brankers  
14 and Associates, David Anderson, and David K Arnold Construction. It made no difference  
15 to Lapidès that some checks were drawn against Jay’s personal account and others against  
16 JJ-AIA’s account—to Lapidès they were all Jay’s personal funds. Lapidès’s testimony  
17 was simply speculation and made in bad faith.

18 197. Jay testified there was no way to tell whether the checks to Paynter  
19 Construction were for work on the Viro Road Property because Paynter “did a lot of  
20 projects for myself and clients.” As to the other payees (Gopher, Behr, Uprising,  
21 Architectural Lighting, Brankers, Anderson, and Arnold) Jay testified they did not work  
22 on the Viro Road Property.

23 198. Lapidès admitted he did not know David Paynter, was not present when the  
24 work was performed, did not talk to Paynter about the work, never asked Paynter for an  
25 invoice or work order for the work, did not know where Paynter was located, never looked  
26 for an address or telephone number for Paynter, never spoke with anyone he knew worked  
27 for Paynter, and when the questioning came to an end admitted he did not know whether  
28 Paynter did any work on the Viro Road Property.

1 199. The same type of examination with the same kind of responses took place  
2 with respect to the checks payable to Behr Construction, Gopher Construction, Uprising  
3 Construction, Garden's, Inc., G&G Air Conditioning, Architectural Lighting, Brankers  
4 and Associates, Hickmet, David Anderson (although a check was deposited to a credit  
5 union in Idaho and another check was deposited to an account at Beehive Credit Union in  
6 Rexburg, Idaho, Lapidès still maintained that David Anderson did work on the Viro Road  
7 Property in California), and Arnold Construction. At the end of questioning, Lapidès  
8 admitted that some of the checks could have been for work performed on projects other  
9 than the Viro Road Property. Questioned further Lapidès admitted there were some checks  
10 he was not certain about. Lapidès admitted it would have been helpful in rendering his  
11 opinion if he had documentation, such as invoices, work order, etc., or if he had spoken  
12 with the people supposedly doing the work, but he did not do that.

13 **b. Bad faith claims regarding interior design services**

14 200. Lapidès listed several checks totaling \$9,210.63 which he testified were for  
15 interior design work on the Viro Road Property. Again, as with the payees of the checks  
16 for construction work, Lapidès never spoke with the payees of the checks issued for the  
17 supposed interior design work and never saw any paper work for the services supposedly  
18 rendered. Lapidès admitted he did not know who ordered the work. Lapidès also admitted  
19 that if a tenant buys furniture, the owner would normally not pay for it, and he did not  
20 know if the checks at issue went to buy furniture. Lapidès was speculating what these  
21 checks were for, and his insistence they were for interior design was a bad faith assertion  
22 on his part.

23 **c. Bad faith claims regarding pest control services**

24 201. Once a year for five years the Johnsons spent \$68 on pest control services.  
25 Lapidès stated that in his expert opinion only the owner pays for those services and  
26 because Jay paid for the services he was the owner of the Viro Road Property. That was  
27 the kind of evidence the Defendants put forward to prove the Plaintiffs guilty of fraud.  
28

1                   **9. Randy Out-Spends Jay by a Considerable Amount**

2           202. Lapidès agreed that part of the search as to who was the true owner of the  
3 Viro Road Property was to examine the comparison between what Jay may have paid  
4 toward the property and what Randy paid toward the property, and the more money Randy  
5 paid the more likely Randy was the owner. Lapidès agreed that if Randy paid the \$10,000  
6 down payment and the additional \$55,000 down payment and paid other money toward  
7 the purchase of the property, that would indicate Randy was the owner, and the more  
8 Randy spent on the property the stronger the indication Randy was the owner. The  
9 evidence at trial showed that if Jay was the owner of the Viro Road Property, he owed  
10 Randy more than \$200,000 because that was the amount Randy spent on the property over  
11 and above what Jay paid Randy.

12                   **L. The Frame 10 Productions Loan**

13           203. The Defendants contended that Jay Johnson owned the Viro Road Property  
14 and withdrew the “equity” in the property through a loan made by Frame 10 Productions.  
15 The Defendants then contended that the proceeds of the Frame 10 Productions Loan were  
16 deposited into the Q Financial account and used to purchase the La Forest Drive Property  
17 in 2001 and therefore Q Financial was Jay’s company, not Randy’s company, and the La  
18 Forest Drive Property was an asset of the Bankruptcy Estate that the Debtors failed to  
19 disclose. As shown above, the Viro Road Property was purchased by Randy Johnson, and  
20 the evidence showed that Randy Johnson borrowed money from Frame 10 Productions  
21 secured by a deed of trust on the Viro Road Property. The evidence also showed Q  
22 Financial was Randy’s company, not Jay’s company, and Lapidès could not trace the funds  
23 from the Frame 10 Productions Loan to the purchase of the La Forest Drive in any event.

24           204. The Note for the Frame 10 Loan is dated June 5, 2000, and is signed by  
25 Randy Johnson as the borrower. Lapidès admitted Randy was obligated to pay the note,  
26 and if there were a default under the Note, Randy alone would be liable for the breach.  
27 Lapidès further admitted he was unaware of anything that indicated Jay guaranteed  
28 payment of the Note.

1           205. The Defendants contended Jay repaid the Frame 10 Loan, but there was no  
2 evidence that was the case; rather, the evidence showed Randy repaid the loan. When the  
3 loan was paid, the Defendants tried to trace part of the funds from McFall back to Jay, but  
4 there was no evidence to support the allegation and the evidence showed no funds ever  
5 ended up with the Debtors.

6           **M. The La Forest Drive Property**

7                 **1. The purchase of the La Forest Drive Property**

8           206. The Defendants argued that the La Forest Drive Property purchased in 2000  
9 was owned by the Debtors but not included in their Bankruptcy Schedules and was part of  
10 the fraud practiced by the Debtors on their creditors. Like the purchase of the Viro Road  
11 Property, there was no evidence to support the allegation the Debtors purchased the La  
12 Forest Drive Property; rather, the evidence proved Randy was the purchaser.

13           207. On June 12, 2000, Q Financial made an offer to purchase the La Forest Drive  
14 Property for \$675,000, and Randy signed the offer in behalf of the company. On June 12,  
15 2000, Randy signed Q Financial's check payable to Coldwell Banker for \$25,000, and  
16 Escrows For You receipted for the payment. The Q Financial record of transactions  
17 regarding the purchase of the La Forest Drive Property showed the issuance of the check  
18 on June 12, 2000 payable to Coldwell Banker for \$25,000 for the deposit on the purchase  
19 of the property, and a reference of a payment to Escrows For You on August 29, 2000 in  
20 the amount of \$212,339.02. The Escrows For You Buyer Final Settlement Statement dated  
21 August 31, 2000, reflects the two payments of \$25,000 and \$212,339.02, and also reflects  
22 Randy is the buyer of the property. Lapidès did not know how Randy, as the buyer of the  
23 property, could treat the disbursement of funds from Q Financial, but because the funds  
24 deposited into escrow came from Q Financial, an LLC, Randy could treat the funds as  
25 either a loan or a disbursement to him.

26           208. The Settlement Statement shows that the purchase price was \$720,000. The  
27 Grant Deed shows the property was taken in the name of Randy Johnson, a married man  
28 as his sole and separate property.

1           209. To purchase the property, Randy signed a note to IndyMac Bank in the  
2 amount of \$500,000, payments to be made in the amount of \$5,047.05 secured by a Deed  
3 of Trust in favor of IndyMac. Lapidès admitted Randy was the only person liable on the  
4 note and the person responsible for any breach of nonpayment. Robin Johnson signed an  
5 Interspousal Transfer Grant Deed with respect to the property. First American Title  
6 Insurance Company issued a Policy of Title Insurance on the property naming Randy as  
7 the insured.

8                   **2. Profit or loss on the project**

9           210. Lapidès testified there was a profit made on the sale of the La Forest Drive  
10 Property. Asked if he did some kind of analysis to determine if there was a profit or loss  
11 on the property, Lapidès testified he looked only at the closing statement which indicated  
12 a few hundred thousand dollars received from the sale. Asked if he ever made a  
13 determination whether there was a profit or loss on the sale of the property, Lapidès said  
14 it was not his assignment to make a valuation of the property, and it did not matter to him.  
15 Asked what he would do to determine if there was a profit or loss, Lapidès said he would  
16 look at the opening and closing escrow statements. Lapidès testified that the escrow  
17 statement for the purchase of the property would indicate how much was paid for the  
18 property, and the escrow statement for the sale of the property would indicate how much  
19 the property sold for. Lapidès continued to refer back to a tax audit and had no real idea  
20 how to determine whether there was a profit or loss on the property, and in his opinion it  
21 really did not matter.

22                   **a. Purchase costs incurred by Randy: \$17,012.63**

23           211. The Escrows For You Buyer Final Settlement Statement for the purchase of  
24 the La Forest Drive Property shows purchase costs of \$18,163.99 with a tax adjustment of  
25 \$1,151.36 for a total of \$17,012.63 in purchase costs (interest is in a different category  
26 (see below)). Lapidès agreed these costs should be considered in determining whether  
27 there was a profit or loss on the project.  
28

**b. Development costs incurred by Randy: \$6,815**

212. In his Report, Lapides stated that Jay paid for the development costs on the project from a hidden account that Jay controlled. Lapides acknowledged there were certain development costs, and he contended Jay paid the costs out of some hidden account, which he identified as the JJ&A account. Lapides agreed these costs should be considered in determining whether there was a profit or loss on the project. There was no evidence JJ&A was Jay's company; rather, the evidence proved JJ&A was Randy's company.

**(1) Development costs incurred by Randy paid by Q Financial: \$4,835**

213. Randy's record of costs on the La Forest Drive Property showed checks signed by Randy totaling \$4,835, and Lapides agreed these would be costs expended that should be taken into account in determining if there was a profit or loss on the project. Randy was proved to be the owner of Q Financial, and the owner of the La Forest Drive Property. Development costs paid by Q Financial for the project would be accounted for as either a loan or a disbursement to Randy, however he chose to account for them.

**(2) Development costs incurred by Randy advanced by JJ&A: \$1,980**

214. Certain checks signed by Randy were paid for expenses on the La Forest Drive Property out of the JJ&A account, and Lapides agreed these would be costs expended that should be taken into account in determining if there was a profit or loss on the project. As indicated, the evidence proved Randy was the owner of JJ&A. Lapides testified he did not have the expertise to opine on whether a company, such as an architectural company, might advance costs for a client and seek reimbursement for those costs. However, in today's world it does not take an expert to recognize that most businesses advance costs for their clients and seek reimbursement. In this case JJ&A was retained to do the architectural work on the project and advanced costs to its client, Randy, the owner of the La Forest Drive Property.

1                                   **c. Mortgage payment costs incurred by Randy: \$40,702.79**

2           215. Lapidès agreed interest costs expended should be taken into account in  
3 determining if there is a profit or loss on the project.

4                                   **(1) Interest on IndyMac Loan at time of purchase:**  
5                                   **\$326.39**

6           216. The Escrows For You Buyer Final Settlement Statement for the purchase of  
7 the La Forest Drive Property shows an interest charge of \$326.39.

8                                   **(2) Interest plus principal on IndyMac Loan incurred by**  
9                                   **Randy and paid by Q Financial: \$40,376.40**

10          217. Randy's records of costs on the La Forest Drive Property showed interest  
11 plus principal payments to IndyMac totaling \$40,376.40. Randy could treat these  
12 payments from Q Financial as either a loan or as disbursements, his choice.

13                                   **d. Randy runs out of money by May 2001**

14          218. With the dot.com bubble burst, Randy lost all his money. With no money,  
15 Randy was unable to continue with the project and Jay had no money to pick it up.

16                                   **e. The transfer of the La Forest Drive Property to JJ&A**

17          219. On November 14, 2001, Randy transferred title to the La Forest Drive  
18 Property to JJ&A. Lapidès testified that Randy transferred the property to JJ&A "for zero  
19 (0) consideration." In his Report, Lapidès stated a number of times that "[a]fter the  
20 purchase, the property was transferred to a 'hidden' corporation controlled by the debtor  
21 (JJ&A) for zero '0' consideration." Lapidès testified that the transfer of the property to  
22 JJ&A was one of the most significant and important events leading him to conclude that  
23 the Johnson brothers had committed fraud. The subject of Randy's transferring the  
24 property to JJ&A for zero consideration took on even greater meaning in his Reply Report  
25 where he discussed it no less than sixteen times.

26          220. In his trial declaration, Lapidès testified that based on his work "as a **senior**  
27 Internal Revenue Service **analyst**" he was "familiar with the rule[s] and regulations  
28 pertaining to personal and business tax returns" (emphasis in original). However, Lapidès

1 testified he only had a “superficial” understanding of the rules and regulations pertaining  
2 to personal and business tax returns, and further testified he had never heard of nor had  
3 any understanding of a Section 351 transfer of property. Asked several questions about  
4 IRC 351 transfers, it became obvious he had no idea what they were.

5 221. Lapidès was shown the year 2001 tax return for JJ&A, indicating the address  
6 on the return was Randy’s home address on Pontiac Street in La Crescenta, and asked if  
7 JJ&A was operating out of Randy’s house. Of course, he said no. It was further pointed  
8 out the tax return was signed in behalf of JJ&A by Randy, as president, not by Jay, and the  
9 return was prepared by Milam, Randy’s CPA, not Sy or Swick, Jay’s tax preparers.

10 222. Lapidès was then directed to the Statement With Respect to IRC Sec. 351  
11 Transfer attached to the tax return. The first sentence of the statement was read to Lapidès:  
12 “Pursuant to IRC Section 351 and the regulations promulgated there under ... the sole  
13 shareholder in exchange for stock, transferred real property to the JJ&A solely in exchange  
14 for stock,” and was asked what he understood that sentence to mean. Lapidès replied:  
15 “That sentence is an indication of a potential fraud because JJ&A was already owned by  
16 Randy 100 percent, how could he get more stock than 100 percent. So that’s another red  
17 flag—sentence you just read. ... A big red flag.”

18 223. Asked if he had ever heard of a company issuing additional stock, Lapidès  
19 answered yes. Asked if Randy owned 100 percent of the stock of JJ&A, and transferred  
20 the equity in the La Forest Drive Property to JJ&A, could Randy not just issue additional  
21 stock, he replied “it doesn’t make any sense,” “that’s one of the two red flags” in the  
22 statement. Asked what his understanding was of the transaction, he repeated what he said  
23 numerous times in his Reports: the property was transferred for zero consideration.

24 224. Lapidès testified he did not seek any help in understanding what the IRC  
25 Section 351 statement meant because he considered it inconsequential. Asked if it would  
26 have been a prudent thing to do if he did not understand the statement, he testified “no.”  
27 It is incomprehensible how a competent bankruptcy trustee or reasonable attorney could  
28 try to prove fraud by someone who knew so little about the subject matter at issue.

**f. Mortgage payments incurred by JJ&A: \$30,282.30**

225. The IRC 351 Statement stated the transfer of the La Forest Drive Property from Randy to JJ&A occurred in May, 2001, and as shown above, Randy made the mortgage payments *via* Q Financial through May 2001. The JJ&A bank statements showed checks for the mortgage payments thereafter totaling \$30,282.30.

**g. Interest paid IndyMac on sale of the La Forest Drive Property: \$3,735.77; total interest paid IndyMac in 2001: \$60,755.63**

226. The California Executive Escrow Services, Inc. Seller Final Settlement Statement for the sale of the La Forest Drive Property by JJ&A to Michael O'Leary shows interest charged on the IndyMac Loan of \$3,735.77. The IndyMac Mortgage Interest Statement issued for 2001 shows total interest paid in 2001 of \$6,755.63.

**h. Costs of sale of the La Forest Drive Property: \$45,421.73; taxes paid: \$4,411.10**

**(1) Costs of sale: \$45,421.73**

227. Lapides agreed the sales costs would also have to be taken into account in determining whether there was a profit or loss on the project. The California Executive Escrow Seller Final Settlement Statement shows the costs incurred in the sale of the property. The interest charge of \$3,735.77 is ignored because it is already included in the IndyMac Mortgage Interest Statement referred to above. Excluding the payment of taxes, which is put in a different category (see below), the total sales costs charged to JJ&A are in the amount of \$45,421.73.

**(2) Taxes paid: \$4,411.10**

228. The California Executive Escrow Seller Final Settlement Statement shows taxes paid and charged to JJ&A in the amount of \$4,411.10. Lapides also agreed this charge would also have to be taken into account in determining whether there was a profit or loss on the project.

**i. Loss on the La Forest Drive Property: (\$89,558.80)**

229. The loss on the La Forest Drive Property which would have been suffered by Randy except for the IRC 351 transfer to JJ&A and which therefore was suffered by JJ&A is (\$89,558.80). The Escrows For You Buyer Final Settlement Statement for the purchase of the La Forest Drive Property by Randy shows a purchase price of \$720,000. The California Executive Escrow Seller Final Settlement Statement for the sale of the La Forest Drive Property by JJ&A shows a sales price of \$775,000. The difference between the two shows a potential profit of \$55,000, but subtracting the costs expended on the project of \$144,558.80 shows a loss of (\$89,558.80). Lapidès agreed that if the figures are correct, there would be a loss on the La Forest Drive Property project.

230. The IRC 351 Statement attached to JJ&A's year 2001 tax return indicates a loan of \$500,000, and Lapidès agreed that if it was an interest only loan there would have been no reduction of principal. The IRC 351 Statement indicates a net equity of \$222,338 in the La Forest Drive Property. The California Executive Escrow Settlement Statement shows net proceeds upon sale of the property of \$223,789.58. The difference between the two figures is \$1,451.58. The difference between the two figures can be explained as follows: By amortizing the \$500,000 loan from the beginning of the loan to May 2001 when the transfer was effective between Randy and JJ&A per the IRC 351 Statement, the principal is reduced to \$498,530.96. The difference between the \$500,000 which Milam assumed was the balance of an unamortized loan and the balance of \$498,530.96 which was the balance of the loan amortized is \$1,469.04. The difference of \$17.46 can easily be accounted for by the bank's computer going out more decimal places.

**j. Receipt of the proceeds of the sale of the La Forest Drive Property**

231. The JJ&A bank statement shows JJ&A received the proceeds of the sale of the La Forest Drive Property on November 23, 2001.

1           **N.     JJ&A's Loan to Lawrence Gillins**

2           232. The Defendants tried to bring in yet another conspirator, Lawrence Gillins,  
3 also a member of the LDS Church in La Cañada and friend of the Johnsons. Randy signed  
4 JJ&A's check dated December 7, 2001, for \$200,000 payable to Lawrence Gillins. In his  
5 Report, Lapidès states Gillins signed a note for the \$200,000 loan "**ONE MONTH AFTER**  
6 the \$200,000 check ... was received by Gillins ..." (emphasis in original)), arguing there  
7 was fraud involved and an effort to cover it up. This would make Gillins a conspirator.  
8 Asked what evidence he had Gillins signed the note one month after receiving the check,  
9 Lapidès testified it was about a month after the date of the check that Gillins signed the  
10 note—he had no other evidence. Lapidès's testimony was pure speculation as to when  
11 Gillins received the check. The reverse of the check reveals it was paid January 3, 2002,  
12 and the JJ&A bank statement shows the check was paid January 3, 2002. Although  
13 unlikely Gillins would hold the check for a month before depositing it, Lapidès stubbornly  
14 testified it made no difference—the check was received a month before the note was  
15 signed.

16           233. Lapidès testified he traced the funds from the sale of the La Forest Drive  
17 Property to the check issued to Gillins by looking at the date the proceeds of the sale of  
18 the La Forest Drive Property went into the JJ&A account, and the date the check to Gillins  
19 was paid, and since they were somewhat close in time, he concluded the proceeds of the  
20 sale went to Gillins. In tracing the funds Lapidès admitted he made no effort to apply the  
21 first-in/first-out methodology or any other methodology to trace the funds. If Lapidès had  
22 applied the first-in/first-out method, he would have discovered that only \$161,391.37 of  
23 the proceeds of the sale of the La Forest Drive Property went into the \$200,000 Gillins  
24 check.

25           234. Asked if he traced the funds after they ended up with Gillins, Lapidès said  
26 "yes," the \$200,000 was used to make the purchase on December 27, 2001 of the two San  
27 Juan properties and the Carmel property purchased by Gillins. Questioned as to how  
28 Gillins could have spent the \$200,000 in December when he did not get the money until

1 January, Lapidès said that now that was pointed out to him, Gillins must have used other  
2 funds and “refreshed the funds” he spent with the \$200,000 check. Lapidès tried to excuse  
3 himself by saying it was not critical or important. Lapidès admitted it was impossible to  
4 have purchased the properties with the \$200,000 check since it was not paid until after the  
5 purchase, but when asked to admit his prior statement that the funds from the check were  
6 used to purchase the properties was incorrect he said “no.” Lapidès obviously has no  
7 concept of what it means to trace funds.

8 235. Lapidès was referred to Gillins’s trial declaration where Gillins stated he  
9 made a payment on the note of \$50,000 in July 2004, and subsequently paid the balance  
10 of the note. Lapidès, who testified he believed Gillins was credible, honest and truthful,  
11 testified he had no evidence or information that would allow him to trace the funds from  
12 the \$200,000 check back to JJ&A. In the next breath, Lapidès said he did have a basis for  
13 tracing the funds back to JJ&A. In questioning him about that, Lapidès admitted he had  
14 not seen any of Gillins’s bank statements. Asked if he knew what Gillins did with the  
15 \$200,000, he said “yes,” he refreshed his account after buying the property earlier, but  
16 could not answer the question as to what Gillins did with the money. Lapidès’s testimony  
17 is sheer nonsense and demonstrates once again that Lapidès had a predetermined  
18 conclusion, in this case that the money could be traced back to JJ&A, and nothing was  
19 going to change his mind, including the facts.

20 236. In his Report, Lapidès stated that Jay Johnson “admitted at his deposition  
21 that he had a 30% ownership interest” in L.G. Development, LLC (a company formed by  
22 Gillins (see below)). Jay never testified he had an interest in L.G. Development, and  
23 Gillins testified Jay never had an interest in L.G. Development.

24 237. In his trial declaration, Gillins testified he formed L.G. Development, LLC  
25 on December 26, 2003. Lapidès, asked how he could testify that Jay Johnson testified he  
26 had a thirty percent interest in a company in December 2001 that was not formed until  
27 December 2003, could not answer the question, because to do so would be to admit he  
28 lied. Gillins stated in his trial declaration that he was the only person who had an

1 ownership interest in the company until 2008, when his wife had an interest in the  
2 company. He testified that at no time did Jay or Debbie or Randy or Robin ever have an  
3 interest in the company.

4 238. Lapedes alleged throughout his Reports that Jay received hundreds of  
5 thousands of dollars from the sale of the homes at 311 San Juan Way and 4810 Carmel  
6 Road, and that Jay was living in the home at 317 San Juan Way rent free for a year before  
7 buying the house. Gillins completely refuted Lapedes's allegations, testifying in his trial  
8 declaration that the profit on the two homes sold "was extremely low," and that, pursuant  
9 to their agreement, Jay "paid the costs of purchasing the lot and building the house together  
10 with ten percent interest on the costs," and that "[e]ven though Jay moved into the house  
11 before he could obtain financing and close the escrow on the sale, and did not pay what  
12 would be called 'rent' during that period of time, the interest on the costs continued to  
13 accrue which exceeded any fair amount of rent that would have otherwise been paid at the  
14 time."

15 **O. The Canyon Meadows Property**

16 239. Jay Johnson did not have the money nor could he obtain a loan to purchase  
17 and develop the Canyon Meadows Property so, in accordance with his practice, he  
18 approached a local developer he knew in La Cañada by the name of John Mahli about  
19 financing the project. After they both saw the property, Mahli said he wanted to be Jay's  
20 partner and that he would put up the money to purchase and develop the property, and he  
21 reimbursed Jay for the initial \$25,000 deposit. Jay was to be the architect and manager of  
22 the project. Later, Mahli decided he did not want to continue with the project and Jay  
23 Johnson signed a note to Mahli for the \$25,000 he had reimbursed him for the deposit. Jay  
24 needed a new partner, and put together two investor groups: one group of investors in Utah  
25 formed a limited liability company for their investment, and a second group of investors,  
26 consisting of Randy Johnson, Joseph N. Burk, Jay Johnson's father-in-law, Dean  
27 Hemstreet, Frank and Jenette Hill, Debbie Johnson's sister and her husband, and Jessica  
28 R. Alsop, the wife of a friend living in Utah (the "Canyon Meadows Investors"), formed

1 a second limited liability company called Canyon Meadows Investors, LLC ("Canyon  
2 Meadows LLC"), for their investment of about \$200,000. The two investment companies  
3 formed a third limited liability company to purchase the project. Jay and Debbie Johnson  
4 had no interest in any of the three companies. However, Jay had an agreement with the  
5 Canyon Meadows Investors, that he would manage the project and share in any profits  
6 generated by the project, and he disclosed this agreement on the Bankruptcy Schedules.  
7 The project later ran into serious problems and eventually the property was sold and the  
8 Canyon Meadows Investors lost their investment, and there were no profits to share. Jay  
9 Johnson was unable to pay the note to Mahli, and listed the debt on the Bankruptcy  
10 Schedules. At trial, the Defendants accused Jay and Debbie of conspiring with the Canyon  
11 Meadows Investors to defraud the bankruptcy court and the creditors of the Bankruptcy  
12 Estate, and, in particular, Lapides, by failing to disclose the Debtors alleged interest in  
13 Canyon Meadows LLC and its value from Gonzalez.

14 240. In his Report Lapides states that the property was purchased in 1993 for  
15 approximately \$200,000 with "only a \$500 mortgage note payable shown at the end of  
16 1999," and concluded that "it is certainly indicated that there exists a profit potential,"  
17 although Lapides had no facts to support his statement. Lapides then states: "If we  
18 estimated +12% annual appreciation from 9-1-1993, the subject property would have an  
19 estimated value and equity of approx. \$300,000 as of the BK filing date." When asked  
20 where he got the 12% annual appreciation rate. Lapides launched into one of his long non-  
21 responsive dialogues, at which point he was asked: "It's not your job to speculate is it?",  
22 and after several more attempts to get him to answer the question, including the court  
23 repeating the question, in response to the specific question, "As an expert in this case it's  
24 not your job to speculate is it?", he stated: "I do make reasonable speculations and  
25 estimations as part of this job." Lapides could give no basis for using a rate of 12%.

26 241. Lapides then states that "[i]f the debtor's (sic) interest [in the Canyon  
27 Meadows LLC] was 50%, this would equate to an estimated equity of approx. \$150,000  
28 as of the BK filing date." When asked where he got the 50% interest for the Debtors,

1 Lapidès said that the Debtors refused to give Gonzalez the information, so he “guessed”  
2 what it was “in order to fulfill my obligation to see if there was a conflict in the schedules  
3 and the data.”

4 242. Lapidès was then shown the Schedule K-1 forms for each of the members of  
5 Canyon Meadows Investors LLC, reflecting their respective ownership interests in the  
6 LLC. When asked to admit that the ownership interests added up to 100%, Lapidès  
7 responded “I don’t know, I haven’t done it.” Lapidès admitted there was a difference  
8 between ownership of the LLC and the profits the LLC might make. After showing that  
9 the percentage ownership of the LLC as listed on the K-1s added up to 100%, and that Jay  
10 Johnson was not one of them, Lapidès was asked to admit that if the K-1s were accurate,  
11 then Jay Johnson would have no ownership interest in the LLC, and Lapidès responded,  
12 “absolutely not, that is false.” Lapidès admitted that the K-1s showed 100% interest in  
13 members other than Jay Johnson for the year 1999 (the year of the exhibits), but that he  
14 did not know what the ownership interests were thereafter. When asked if he was then  
15 speculating about the subsequent years, Lapidès said he did not know if he had the later  
16 years or whether they were attached to his Report. Eventually Lapidès admitted that if the  
17 K-1s were accurate and truthful, those facts would indicate that Jay Johnson did not have  
18 an ownership interest in the LLC. Lapidès then argued that not having an ownership  
19 interest did not mean Jay Johnson did not have an interest in the profits the LLC might  
20 make (a fact that Jay Johnson never disputed). Asked if he had at any time seen anything  
21 that indicated that the LLC had made any profits, he said “no.” Not willing to face reality,  
22 Lapidès stated that even though the K-1s added up to 100% ownership in others, the “key”  
23 document, the “partnership agreement” might show Jay Johnson having an ownership  
24 interest in the LLC, and even though he had never seen the document and did not know  
25 what it said he “suspected” it would show Jay Johnson having some interest. Lapidès said  
26 he guessed 50% in his Report because he did not know what it was: it could be 75% it  
27 could be 80%, he did not know what it was, and when counsel suggested it could be zero,  
28 Lapidès responded “no.”

**P. The Fallbrook Property**

243. Lapides testified Jay purchased twelve lots in Fallbrook, California for \$3,252,000 cash. The Defendants accused the Debtors of failing to list the Fallbrook Property as an asset in the Bankruptcy Schedules. The Defendants had no evidence to support such an extravagant claim, and the evidence proved Jay did not purchase the property.

244. The Vacant Land Purchase Agreement and Joint Escrow Instructions show the offer to purchase the property is from “Jay W. Johnson, Debra F. Johnson or assignee”, signed by Jay and Debbie. The \$20,000 deposit on the offer was made by Jay and Debbie. The seller made a counter offer, and Jay and Debbie made a counter offer, and LandAmerica Commonwealth issued a receipt for the \$20,000 deposit.

245. A Commercial Cover Sheet showed Jay and Debbie and JJ-AIA and 8000M, LLC as buyers of the property. A cover letter from the escrow officer and the Third Party Deposit Instructions sent with the letter indicate receipt of an additional \$30,000 deposit coming from Steven F. Nelson to be used as a portion of the total cash required for the transaction.

246. The Escrow Amendment/Supplement shows JJ-AIA assigning to 8000M, LLC “all interest in and to and all right to acquire title to the property which is the subject of this escrow”, and “all funds now on deposit to the account of Buyer in this escrow,” and JJ-AIA being released as buyer and 8000M, LLC agreeing to perform “as if it was the original party to the escrow instructions and Agreement in place of Buyer,” and concluding that the property is to be vested in 8000M, LLC. Thereafter the escrow closed and the escrow, by cover letter addressed to 8000M, LLC in c/o Steven F. Nelson, sent the refund check in the amount of \$51,588.54 and a settlement statement and HUD form to 8000M, LLC. The Buyers/Borrowers Closing Statement shows the buyer as 8000M, LLC, to be signed by Steven F. Nelson, Managing Member of 8000M, LLC. The Grant Deeds are signed by Steven F. Nelson as sole owner of 8000M, LLC.

1           247. Every document shows the property being purchased by Steven F. Nelson's  
2 company, 8000M, LLC. There is nothing to connect the Debtors to any ownership interest  
3 in the company, and Lapides never inquired of Nelson or did any other research to  
4 determine if the Debtors had any interest in the company. It is obvious why Lapides  
5 stopped his investigation at this point—everything proves it is Nelson and his company  
6 buying the property, and any further evidence would only confirm the Debtors had no  
7 interest in the company.

8           **Q. Q Financial**

9           248. The Defendants alleged the Debtors were the true owners of Q Financial.  
10 The evidence regarding Q Financial can be summarized as follows:

- 11           ➤ Randy Johnson formed Q Financial in 1997, four years before the Debtors  
12           filed for bankruptcy.
- 13           ➤ Randy and Robin Johnson were the only owners or members of Q Financial;  
14           the Debtors were never owners or members of the company.
- 15           ➤ Q Financial's tax returns were signed by Randy, not Jay.
- 16           ➤ Q Financial's tax returns were prepared by Mike Milam, Randy's and his  
17           companies CPA, not by Sy or Swick, Jay's and his company's tax preparers.
- 18           ➤ The only money deposited into Q Financial's accounts was the \$400,000  
19           Randy invested and deposited in the company's Union Bank account, the  
20           \$355,000 from the sale of Q Financial's stock in Ask Jeeves deposited into  
21           the Wells Fargo account, the \$350,000 from the Frame 10 loan, borrowed by  
22           Randy, and the \$85,000 transferred from JJ&A which were funds "due to"  
23           JJ&A and "due from" Q Financial.
- 24           ➤ No money from the Debtors or JJ-AIA was every traced into Q Financial's  
25           accounts.
- 26           ➤ Money from the sale of Q Financial's Ask Jeeves stock and some money  
27           from the Frame 10 loan was used by Randy for the downpayment on Randy's  
28           purchase of the La Forest Property.

- With only a couple of exceptions when Randy's assistant "Molly" signed checks, Randy signed all checks and made all transfers of funds into or out of the Q Financial accounts, including the few checks issued to Lapidès as an advance of money to Jay to meet his obligations to Lapidès under the June 2000 Agreement.
- Jay never wrote or signed a single check on the Q Financial accounts.
- All checks from JJ&A to Q Financial (due from Q Financial transfers) were signed by Randy; not a single check ever deposited to Q Financial from any source was ever signed by Jay.
- One check for \$5,000 was issued by Q Financial, Randy's company, to JJ&A, Randy's company, to meet a cash flow problem.
- Lapidès had no idea what kind of business Q Financial was engaged in, what it produced or manufactured or what services it rendered, what investments in made, who worked in the company, what they were paid—he knew nothing about the company.

249. In his Report Lapidès identified Q Financial as one of the co-conspirators defrauding the creditors of Jay and Debbie Johnson, including him. For purposes of this action, it was admitted Q Financial was formed in March 1997, Randy and Robin Johnson were the only members or owners of Q Financial, and Jay and Debbie Johnson had never been owners of record of Q Financial. Lapidès testified an LLC is a limited liability company, but it was not important in this case to know what an LLC was or could or could not do; it was only important to know that it is an "entity." Nonetheless, Lapidès concluded "Jay had some undisclosed interest in Q Financial and that he deposited money there to hide it from detection." In answer to what kind of interest Jay had in Q Financial, Lapidès could only say money was coming out of Q Financial for Jay's benefit and he could not identify any other kind of interest. Lapidès had no idea what kind of business Q Financial was engaged in or whether it produced or manufactured anything; nor did he know who Q Financial employed. He knew nothing about the business and it did not matter to him.

**R. Lapidès Changed His Testimony Regarding the Conspirators and Other Subjects**

250. Obviously concerned with the accusations he made against people he called conspirators in the fraud he alleges was perpetrated upon him, Lapidès back-pedaled as fast as he could at trial. Regarding several people, Lapidès changed his testimony. Some of these people have lived through years of accusations of fraud and criminal activity and threats of investigation by the IRS, the U.S. Trustee's Office, and the Department of Justice, and eventual incarceration and a judgment for millions of dollars, only to now be told by Lapidès that he does not know if they were the conspirators he was so sure of in the beginning. Of great significance is that each of the Plaintiffs must be treated individually, for example, Debbie and Robin had virtually nothing to do with the transactions complained about, and yet each was accused and pursued even though as to them there was absolutely no evidence of complicity. Even Lapidès had to admit this at trial.

**1. Lapidès testified it was not his opinion that Debbie Johnson had conspired to hide assets**

251. In his Report, Lapidès unequivocally states that "[a]s a result of the information secured from numerous third party sources, and the depositions of the debtors Jay and Debra Johnson, we [Lapidès] were ultimately led to the conclusion that the debtors ... conspired to conceal the debtor's cash, other assets, and owned real estate ...." Lapidès goes on to affirm that "[t]he individuals ... involved in the conspiracy to defraud the bankruptcy creditors" include Debbie Johnson. Throughout his Report Lapidès condemns Debbie Johnson equally with her husband in the fraud he so excruciatingly details as having been perpetrated upon him. For example, Lapidès states: "As a result of the debtors, Jay and Debra Johnson conspiring with their co-conspirators," ownership of the Viro Road Property "was not reported in any of the BK schedules submitted, or on the debtor's tax returns." At another place, Lapidès refers to Randy Johnson's testimony regarding JJ&A and concludes: "This testimony of Randal Johnson suggests that JJ&A was created as a

1 means to hide Jay Johnson's assets and to allow the debtors Jay & Debra Johnson to  
2 defraud their creditors." That was the Defendants's mantra at the beginning and  
3 throughout ten years of grueling litigation. At no time did any of the Defendants ever let  
4 Debbie out of the case. Rather, they kept her in the case where she suffered all the invective  
5 heaped upon the others just to put additional pressure on Jay to settle. Sensing he was on  
6 thin ice and obviously concerned about the "evidence" in his Report, at trial Lapidès  
7 changed his opinion regarding Debbie's status as a conspirator. Incredibly, Lapidès denied  
8 that he ever accused Debbie Johnson of conspiring with Jay Johnson to hide assets from  
9 Lapidès, and further testified that it was not his opinion that Debbie had conspired to hide  
10 assets. It was unconscionable for the Defendants to pursue Debbie knowing they had no  
11 evidence to implicate her in the serious accusations of fraud on the bankruptcy court, the  
12 trustee, and the creditors.

13                   **2. Lapidès testified at trial that he did not have an accusation against**  
14                   **Robin Johnson for conspiring with the others**

15           252. In his Report Lapidès had no hesitation in identifying Robin Johnson as one  
16 of the main conspirators against whom he wanted a judgment rendered. He directly  
17 accused her of being involved in the conspiracy to hide the true ownership of the Viro  
18 Road Property, the fraudulent transfer of the proceeds of the Sale of the Viro Road Property  
19 by Michael McFall back to Robin and then the Debtors, the fraud involving MVM  
20 Franchise Partners, and the fraud involving Lawrence Gillins and the Note to JJ&A. But  
21 when asked at trial if he was accusing Robin of conspiracy, Lapidès said he did not have  
22 an accusation against her for conspiring and did not now know if she was involved. Like  
23 Debbie, though, at no time did any of the Defendants ever let Robin out of the case. Rather,  
24 they kept her in the case where she suffered all the invective heaped upon the others just  
25 to put additional pressure on Randy to settle. As with Debbie, it was unconscionable for  
26 the Defendants to pursue Robin knowing they had no evidence to implicate her in the  
27 serious accusations of fraud on the bankruptcy court and the trustee and the creditors.  
28

1                   **3. Lapidès testified he does not know whether Michael McFall is a**  
2                   **conspirator**

3           253. Lapidès makes abundantly clear in his Report that in his opinion Michael  
4 McFall was an integral and major player in the conspiracy to hide assets. Lapidès begins  
5 his Report by stating that “[a]s a result of the information secured from numerous third  
6 party sources, and the depositions of the debtors Jay and Debra Johnson, we were  
7 ultimately led to the conclusion that the debtors ... and a close friend of the debtors  
8 (Michael E. McFall) conspired to conceal the debtor’s cash, other assets, and owned real  
9 estate – including 4600 Viro Rd., ....” Lapidès goes on to affirm that “[t]he individuals ...  
10 involved in the conspiracy to defraud the bankruptcy creditors” include McFall. After Jay  
11 and Randy Johnson, McFall is mentioned as a conspirator more than anyone else in the  
12 Lapidès Report—literally scores of times. Lapidès makes McFall an integral and principal  
13 player in the Viro Road Property transaction, the Circle Vista Property transaction, the  
14 MVM transaction, and almost every other transaction identified in the Lapidès Report.  
15 The Report can hardly be opened at random without seeing McFall’s name mentioned in  
16 connection with some alleged fraud. On the first day of trial, however, Lapidès  
17 incredulously stated that he could not recall if he accused McFall of conspiracy and stated  
18 that he only found some “inconsistencies” between McFall activities and the bankruptcy  
19 which did not “correlate.” Without the participation of McFall, however, much of the  
20 alleged fraud could not have taken place, so the Defendants left McFall in so the case  
21 would not collapse. If the fraud required McFall’s participation, but there was no evidence  
22 of participation, then the case should not have been continued.

23                   **4. Lapidès testified he does not know whether Greg and Elaine**  
24                   **Litster are conspirators**

25           254. At the beginning of his Report, Lapidès names R. Gregory Litster (Robin  
26 Johnson’s brother) and his wife, Elaine Litster, as “individuals ... involved in the  
27 conspiracy to defraud the bankruptcy creditors ....” Lapidès testified at trial that he does  
28

1 not know if the Litsters were aware of the fraud. If the Litsters were not aware of the fraud,  
2 then that part of the fraud case collapses and the case should not have been continued.

3 **5. Lapidès testified he does not know whether Michael Milam is a**  
4 **conspirator**

5 255. At trial Lapidès could not recall accusing Michael Milam of joining the  
6 conspiracy. But without Milam, another part of the fraud is non-existent and the case  
7 should not have continued.

8 **6. Lapidès testified he does not know whether Lawrence Gillins is a**  
9 **conspirator**

10 256. At trial Lapidès testified that he came to no conclusion about whether  
11 Lawrence Gillins was a conspirator. This was after he implicated Gillins in the hiding of  
12 JJ&A's money. Without Gillins, another part of the fraud is non-existent and the case  
13 should not have continued.

14 257. The Defendants acted in bad faith, intentionally and maliciously instigating  
15 and continuing the adversary proceedings against the Plaintiffs without any evidence to  
16 prove the allegations in the proceedings, and knowing their conduct would result in the  
17 damages sustained by the Plaintiffs. Accordingly, the Defendants acted with malice,  
18 willfulness, fraud, and oppression, and in total disregard of the rights of the Plaintiffs;  
19 because of such willful, malicious, fraudulent, and oppressive acts, an example should be  
20 set, and the Defendants should be punished. Accordingly, the Plaintiffs are entitled to an  
21 award for and hereby demand punitive or exemplary damages against the Defendants.

22  
23  
24 WHEREFORE, the plaintiffs pray for judgment as follows:

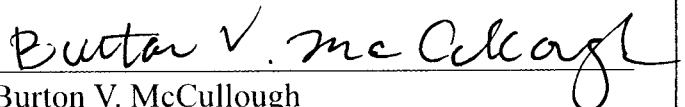
- 25  
26 1. For all costs and expenses, including attorneys' fees, incurred in defending  
27 against Gonzalez I and II in the sum of \$1.8 million;  
28

2. Damages for the emotional distress suffered by reason of the false allegations made against them in Gonzalez I and II and having to endure ten years of unjustified and bitter litigation;
3. For punitive or exemplary damages;
4. For costs of suit incurred herein;
5. For reasonable attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems just and proper.

JURY DEMAND

The Plaintiffs hereby demand trial by jury.

Dated: May 19, 2017

  
Burton V. McCullough  
Attorney for Jay W. Johnson, Debra F. Johnson,  
Jay Johnson A.I.A. and Associates, Inc.,  
Randal A. Johnson, Robin L. Johnson, JJ&A  
Architects, Inc., and Q Financial Group, LLC